

S. HRG. 107-1139

**THE ROLE ENRON ENERGY SERVICE, INC., (EES)
PLAYED IN THE MANIPULATION OF WESTERN
STATE ELECTRICITY MARKETS**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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JULY 18, 2002
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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WESTERN STATE ELECTRICITY MARKETS**

THURSDAY, JULY 18, 2002

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 11:15 a.m. in room SR-253, Russell Senate Office Building, Hon. Byron L. Dorgan presiding.

**OPENING STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. We will now begin our next hearing, which is a full Committee hearing. We will ask Secretary White, who is the sole witness. Secretary White, why don't you have a chair at the witness table, if you would.

Mr. Secretary, we appreciate very much your willingness to come to testify today before the Senate Commerce Committee. As you know, the Subcommittee of the Senate Commerce Committee that deals with consumer affairs and related issues has been holding a series of hearings which include hearings on Enron issues and also corporate responsibility issues. Let me say first of all that we take no pleasure in inviting you to come today, and I expect you take no pleasure in being here. You have had a long and distinguished career serving your country, and we salute you for that, but as you know, we have had hearings before the Subcommittee and the full Committee dealing with the Enron Corporation; it is my feeling, based upon what we have determined from a range of information, that there was, in fact, a culture of corruption in that corporation.

You worked in an executive capacity for that company. We had, for example, most recently a hearing that dealt with the issue of California pricing for energy and, in that hearing, we heard testimony about schemes that were used in California for the pricing of wholesale energy, schemes that were called, among other things, Get Shorty, Fat Boy, and Death Star.

In testimony at that hearing, it raised questions about how the energy pricing occurred in the State of California, and whether a division of Enron that you were involved with which retailed electricity in California was involved in any way with respect to the wholesale schemes that were involved. I use the word schemes advisedly, because I think there is a substantial amount of evidence that there was manipulation of pricing in the California market-

place. Was the division of Enron that you headed involved in that? Were you an enabler? Were you aware of what was going on? We want to ask a series of questions about that.

In addition to that, of course, in recent days and weeks issues have been raised about accounting treatment in corporations. In some cases, accounting scams. We want to talk to you about those issues as well, and we understand that your compensation at the Enron Corporation was in some way attached to California pricing policies, wholesale and retail prices paid in California, and so we want to visit with you about that.

Let me again say that I take no joy in calling people before the Subcommittee, or full Committee. Nor do my colleagues, but, in some corporations, there have been bankruptcies and restatements, and people at the top have left with a pocketful of gold while the investors and the employees have lost their jobs or their life savings. On their behalf, we have to ask tough questions.

On behalf of the people in California who were consumers of electricity and who discovered dramatic run-ups in the price of electricity and brownouts and blackouts in California, and especially in light of what we have learned in previous hearings, we have an obligation to ask tough questions. It's for the whole West Coast, not just California—I have mentioned California, but for Oregon and Washington, as well, we have an obligation to ask tough questions. If there was price manipulation, who was involved? Who is responsible? Who is going to own up to it?

So, as a result of those hearings, Secretary White, we call you before this Committee, and we appreciate your willingness to testify.

Let me call on some of my colleagues for brief opening comments, after which I will ask you to take an oath, and then we will hear your statement. Let me call on the Ranking Member of the full Committee, Senator McCain.

**STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA**

Senator MCCAIN. Mr. Chairman, I have no opening statement. Secretary White, perhaps I should save this for an Armed Services Committee, but I see \$38,000 here—the amount some 200 army personnel spent using Government charge cards to get lap-dances and other forms of entertainment at strip clubs near military bases. Now, would you agree that there has been abuse after abuse after abuse on this credit card situation. I know it is not the subject of this hearing, but that is not helpful in gaining the American people's support for the American military.

I thank you for appearing here today.

Secretary WHITE. I agree, by the way.

Senator MCCAIN. I want to know what you are doing about it. I figured you might agree, and so I thank you. I thank the Chairman, for holding the hearing.

Senator DORGAN. The Ranking Member of the Subcommittee, Senator Fitzgerald.

**STATEMENT OF HON. PETER G. FITZGERALD,
U.S. SENATOR FROM ILLINOIS**

Senator FITZGERALD. I have no opening statement, Mr. Chairman.

Senator DORGAN. Senator Wyden.

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman. I appreciate your conducting this inquiry. It has enormous impact on my constituents, and I think what we are going to be looking at today is whether we are dealing with a textbook case of an Administration insider faced with serious allegations of questionable conduct getting kid glove treatment, and I want to be very specific about what I am concerned about.

There is substantial evidence that Mr. White misled investors about the finances of Enron Energy Services, with his former staff at the company tying him directly to deceptive acts.

There is substantial evidence that, while Mr. White served as Vice Chairman, his former company was directly involved in Enron's trading schemes to manipulate West Coast energy markets, which has been devastating to my constituents.

There is substantial evidence that, while serving in his present capacity as a U.S. Government official, Mr. White has used military jets for personal business, and what especially troubles me is that I do not see any evidence to date that these actions are being timely and thoroughly investigated by this Administration's regulators.

For example, Enron Energy Services publicly reported profits until Enron collapsed, but it now appears the company lost money every quarter. Former Enron employees say Mr. White helped mislead the analysts and investors about the performance of Enron Energy Services, and then he personally approved the use of aggressive accounting methods that made his company appear profitable when it was not.

We need to find out whether the U.S. Securities and Exchange Commission is investigating this thoroughly, and when, if ever, they plan to act. Despite the evidence that the company was extensively involved in Enron's trading activities, Mr. White has been quoted in the paper as saying that EES, his company, was not involved in manipulation of West Coast energy markets, claiming that, quote, we were not privy to their trading strategies.

The documents that have been obtained by the Attorney General of my state and other western states show that Enron Energy Service employees were present at meetings where Enron's market manipulation strategies were discussed, and that they received e-mails, both describing these strategies and discussing how to respond to the regulator's subpoenas. I want to know what the Federal Energy Regulatory Commission is doing to examine this.

So there are other important issues we need to look at, Mr. Chairman. Particularly, what I want to know is whether the issues involving the Securities and Exchange Commission and the Federal Energy Regulatory Commission are being examined thoroughly and in a timely way. We have not seen any evidence to date that that

is the case, and given the amount of damage these actions caused to my constituents, I want to get to the bottom of this and hear from Mr. White.

Senator DORGAN. Senator Breaux.

**STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA**

Senator BREAUX. I pass.

Senator DORGAN. Senator Boxer.

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. I would ask my statement be placed in the record.

Senator DORGAN. Without objection.

Senator BOXER. I would briefly say I want to echo what the Chairman said about this not being a happy day for anybody, but we have to have an interest in what happened and at Enron, particularly the people on the West Coast, and I am interested in knowing what EES—that is the Enron Energy Services, of which you were Vice Chairman—what role they played in creating the accounting scandals that led to Enron’s downfall, the cost to the State of California of billions of dollars in fraudulent charges, the ruination of the financial security of thousands of Enron employees and shareholders throughout the country, and billions of dollars of losses to pensions throughout the country.

I will ask when I have a chance what you knew about Enron and EES’s sham accounting practices and trading schemes. I will ask what you knew about hiding obscene profits generated in California in order to keep the truth from our constituents. I will ask you about your sale of Enron’s stock in escalating amounts as you spoke to former Enron associates in this climate today. The actions of high level executives must be looked at.

I am deeply concerned about the numbers of phone calls that occurred after 9/11, after we were attacked, and after we were actually—you had personnel in Afghanistan working 24/7, and these escalating phone calls and sales of stock.

I will put the rest of my statement in the record. I am very concerned about both the actions on the sale of the stock, and also what EES did to my people in California.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

I want to thank you all for being here. I want to give you a preview of my questioning of Army Secretary Thomas White on Thursday.

Thomas White joined Enron in 1990. He was Vice Chair of Enron Energy Services or EES from 1998 to 2001. EES was an Enron retail trader that entered into long-term energy contracts with California.

I will ask Secretary White what he knows about sham accounting practices and trading schemes at Enron such as “Get Shorty,” “Fat Boy,” and “Ricochet.”

I will ask about Enron hiding obscene profits from California in order to keep the truth from the public. I will ask him about the sale of his Enron stock in escalating amounts as he spoke to Enron associates. I will ask him about his personal involvement in pushing Enron stock on its employees. Did Secretary White ever let those poor Enron employees know when he was selling his stock and changing his mind about the outlook of the company?

I have a chart (see Timeline in Appendix) showing Secretary White's Enron stock sales and the phone calls and meetings he had during the period of time that he unloaded 405,710 shares to the tune of \$12.1 million. The chart shows a total of 74 phone conversations and 7 meetings with Enron associates.

Amazingly, six of White's seven meetings with Enron associates occurred after we were attacked on September 11th. Remarkably, 54 calls were made after Secretary White became the Pentagon's Homeland Security Director. 50 calls were made after our military was placed in harm's way in Afghanistan.

Now, I think it's fair to say that after 9/11, the leader of the Army, the Secretary of the Army, is one of the most important people at the Pentagon—perhaps in our nation. And add to that Pentagon Homeland Security Coordinator.

I want to say that these calls and meetings should have taken place with those responsible for protecting America's military abroad and lives at home.

I find it remarkable that Secretary White would have had even a moment to spare to chat with his former associates. What do you suppose they spent all that time talking about? From the looks of this chart it's pretty obvious. Martha Stewart made a few phone calls about a stock and it set off a Congressional investigation in the House.

Her phone calls pale in comparison to the Secretary of the Army. If on Thursday, Secretary White does not respond to these matters, I believe that it is in the best interest of the nation that he resign.

Senator DORGAN. Senator Cleland.

**STATEMENT OF HON. MAX CLELAND,
U.S. SENATOR FROM GEORGIA**

Senator CLELAND. Thank you very much, Mr. Chairman. Mr. Secretary, welcome. Thank you very much for coming. I have to note for the record that I am on the Armed Services Committee and admire the fact that you were in the Army for 23 years, a graduate of West Point in 1967, a Vietnam veteran, selected by General Colin Powell when he was Chairman of the Joint Chiefs of Staff as his Executive Assistant, and the first in your West Point class to make General. That is an awesome record, exemplifying duty, honor, country.

Then the story turns. In 1990, Enron offered you a multi-million dollar salary, got you involved in the power business, and you were at Enron for 11 years. Enron has now become the poster boy for what Alan Greenspan calls infectious greed, the opposite of duty, honor, country, and I would like to know, and through the questions I have later on, how in the world that you could reconcile a great career in the United States Army that is exemplary with 11 years at Enron that wound up to be actually something that we all wish we had never heard of.

Thank you very much, Mr. Chairman.

Senator DORGAN. Senator Carnahan.

**STATEMENT OF HON. JEAN CARNAHAN,
U.S. SENATOR FROM MISSOURI**

Senator CARNAHAN. Thank you, Mr. Chairman. Over the course of the last few months, this Committee has worked very hard to uncover the roots of the California energy crisis. Only by fully understanding the circumstances that led to skyrocketing prices and rolling blackouts can we be assured that Americans will never have to face that again.

Secretary White's testimony is essential to our full understanding of the energy crisis and the role that Enron played. Secretary White, in your capacity as Vice Chairman of Enron's Energy

Services, you were familiar with both the energy trading strategies used by Enron and the aggressive accounting practices used to inflate the profits of EES. The results of those strategies and practices are shocking. The manipulation of energy markets contributed to a devastating energy crisis for Americans living on the West Coast.

Dubious accounting contributed to the spectacular collapse of what was supposedly one of America's largest corporations. Thousands of employees lost their jobs, and many of them lost their savings. We want to know what role you played in this meltdown. When Senator Gramm introduced you to the Senate Armed Services Committee during your confirmation hearing last year, he lauded you as, "one of the most outstanding managers in corporate America." In accordance with that representation you were confirmed to serve as Secretary of the Army.

The Enron documents which have come to light since your confirmation reveal that Enron Energy Services, which you managed, was artificially inflating its demand for power. This practice enriched Enron, but it devastated consumers. The aggressive accounting practices used by EES made that unit appear more profitable than it really was, which, of course, was a chronic problem at Enron. I hope you will share with us your explanation of these troubling revelations. I look forward to hearing from you.

Senator DORGAN. Senator Nelson.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman. Mr. Chairman, I would like the Hon. Secretary just in the course of his conversation and in the course of his testimony if he will share with us basically within a 5-month period \$12 million worth of stock was sold, starting in June, June 13, proceeds of over \$8 million, a sale then in September of \$848,000, and then a sale in October of \$3 million worth, while at the same time conversations were occurring with Enron executives on the telephone, and while meetings were occurring with Enron executives during this same 5-month time frame. And, so, I am looking forward to hearing your testimony.

Thank you.

Senator DORGAN. Senator Nelson, thank you.

Mr. Secretary, by custom in these hearings we have had witnesses testify under oath, and we would like you to take the oath. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Secretary WHITE. I do.

Senator DORGAN. Mr. Secretary, why don't you proceed.

**STATEMENT OF HON. THOMAS E. WHITE,
SECRETARY OF THE ARMY**

Secretary WHITE. Thank you, Mr. Chairman. My name is Tom White, and I am appearing here voluntarily to answer the questions the Committee may have with respect to its investigation regarding the California energy marketplace in 2000 and 2001.

Since May 2001 I have been privileged to serve as the Secretary of the Army. From July 1990 until that date, I was employed by

Enron Corporation. For several years I ran various businesses that involved physical assets, including gas pipelines and power stations. Beginning in April 1998, I brought that experience to a start-up retail energy business called Enron Energy Services, or EES, where I was assigned the duties of Vice Chairman, a job I held until February 2001.

Enron was divided into a number of business units which changed from time to time as energy markets evolved over the years. With respect to the California energy market in 2000 and 2001, it is important to understand that the energy services business I ran was entirely separate from the wholesale business run by Enron Wholesale Services. EES was strictly a retail energy operation of national and international scope that sold commodity capital and energy services to the end users of energy. Those products included both gas and electricity, were both short and long term, and were sold to small and large customers located throughout the United States and the U.K.

To give you a feel for the scope of EES' operation, when I departed it had somewhere in the neighborhood of 4,000 people in its Energy Service Division operation alone. They included customer account representatives, call center operators, metering and billing specialists, mechanical and electrical subcontractors, energy efficiency design engineers, and facility managers.

EES had in place the structure and the organization on a nationwide basis to deliver its diverse energy product. My day-to-day duties included overseeing these service delivery organizations. The common thread in all the retail energy products sold was the lowering of total energy cost to our customers. EES achieved this by buying energy at better prices than could be achieved by our customers, and reducing the energy consumption of its customers through the application of engineering and operations expertise.

Enron Wholesale Services was a much larger operation than EES. Although, among other things, it had a huge trading operation which facilitated its sale of energy at the wholesale level, EES in concept or in contrast was a buyer of energy and was a participant in California's power market because it had retail customers. It had retail load, if you will, that it was contractually obligated to serve. EES' interest was to serve that load at the lowest possible cost and to reduce the need for electricity in the first place through demand reduction measures. As a retail seller of electricity, it was always in EES' interest to purchase the electrons EES was required to deliver to its customers at the lowest possible price.

EES shopped in the market for the best possible price, which in many cases was provided by a third party and not an Enron wholesale energy affiliate. In this regard, the interests of EES were entirely different from those of Enron Wholesale Services. It always operated on a strictly arm's length basis with Enron Wholesale. That reflected its different business interests. I was never aware of or read the memos on alleged power trading strategies at the Wholesale Services that have been discussed in previous hearings held by this Committee until copies of those memos were sent to me when they were made public by the FERC several months ago.

I never worked for Wholesale Services. I was never involved in its trading operations, and so I cannot testify with respect to how these operations were conducted. I can categorically say, however, that it was not ever in the interest of EES to see wholesale energy prices escalate.

While I was employed in the private sector, I carried out my responsibilities in an entirely ethical manner, just as I did over the 28 years that I have served my country in the United States Army. I decided to return to the Government as Army Secretary with the sole goal of helping the Army and making it a better place for soldiers and their families. Since last May, I have done everything possible to advance the interest of the country and the Army I love. I am proud of what has been accomplished since then by courageous, dedicated men and women who served to protect our great nation. It has been an honor to be involved in their efforts.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions the Committee may have.

[The prepared statement and timeline of Secretary White follow:]

PREPARED STATEMENT OF HON. THOMAS E. WHITE,
SECRETARY OF THE ARMY

My name is Thomas E. White. I am appearing here voluntarily to answer questions the Committee may have with respect to its investigation regarding the California energy marketplace in 2000 and 2001.

Since May 2001, I have been privileged to serve as Secretary of the Army. From July 1990 until that date, I was employed by Enron Corporation. For many years, I ran various businesses that involved physical assets including gas pipelines and power stations. Beginning in April 1998, I brought that experience to a start-up retail energy business called Enron Energy Services, or EES, where I was assigned the duties of Vice Chairman until February 2001.

Enron was divided into a number of business units which changed as energy markets evolved over the years. With respect to the California energy market in 2000 and 2001, it is important to understand that the Energy Services was always entirely separate from the wholesale business run by Enron Wholesale Services. EES was strictly a retail energy operation of national and international scope that sold commodity, capital and energy services to end users of energy. Those products included both gas and electricity, were both short and long-term, and were sold to small and large customers located throughout the United States and the UK. To give you a feel for the scope of EES' operation, when I departed, it had somewhere in the neighborhood of 4,000 people in its energy service delivery operation alone. They included customer account representatives, call center operators, metering and billing specialists, mechanical and electrical subcontractors, energy efficiency design engineers and facility managers. EES had in place the structure and organization on a nationwide basis to deliver its diverse energy product. My day-to-day duties included overseeing this service delivery organization.

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Mr. Chairman, that concludes my statement. I would be pleased to answer any questions.

TIMELINE

May 4, 2001

White writes to Army General Counsel saying he will divest all Enron stock, options and other Enron-related holdings within 90 days of his appointment.

May 24, 2001

White is appointed Secretary of the Army.

June 7, 2001

White talks with David Haug, Chairman of Enron Global.

June 13, 2001

White sells 92,000 shares of Enron stock for \$4.63 million.

June 15, 2001

White sells 42,338 shares of Enron stock for \$2.06 million.

June 19, 2001

White sells 10,000 shares of Enron stock for \$446,990.

June 20, 2001

White talks with Jack Urquhart, member of Enron Board of Directors.

June 22, 2001

White sells 25,000 shares of Enron stock for \$1.1 million.
White talks with Christie Patrick, Enron VP for Public Affairs.

June 28, 2001

White talks with David Haug, Chairman of Enron Global.

August 6, 2001

White talks with Chris Holmes, Enron VP, and Robert Hurt, Enron Energy Services (EES) executive.

August 8, 2001

White talks with Robert Hurt, Enron Energy Services (EES) executive, and Stan Horton, Enron Gas Pipeline President.

August 9, 2001

White requests a 125-day extension from the Office of Government Ethics (OGE) until January 1, 2002 to complete the divestiture.

August 13, 2001

The Senate Armed Services Committee grants White a 90-day extension to complete his divestiture.

August 14, 2001

White talks with Christie Patrick and Chris Holmes.
Jeffrey Skilling resigns as CEO of Enron.

August 16, 2001

White talks with Joe Sutton, Enron Vice Chairman.

August 17, 2001

White talks with Chris Holmes.

August 20, 2001

White talks twice with Rosalee Fleming, Enron executive.

August 22, 2001

White talks with Marty Sunde, EES Vice Chairman.

August 23, 2001

OGE grants White a 90-day extension until November 20, 2001.

September 3, 2001

White talks with Joe Sutton.

September 7, 2001

White sells 23,000 shares of Enron stock for \$713,000.

September 9, 2001

White talks with Jude Rolfes, Enron VP.

September 10, 2001

White talks with Ken Lay, Enron Chairman.

White meets with David Haug.

September 17, 2001

White talks with Chris Holmes.

September 24, 2001

White sells 5,000 shares of Enron stock for \$135,500.

White meets with Christie Patrick.

October 2, 2001

White talks with Rex Rogers (affiliation unknown at this time).

October 4, 2002

White meets with Greg Whalley, Enron President.

October 8, 2001

White talks with Robert Hurt.

October 11, 2001

White talks with Ed Giblin (affiliation unknown at this time).

October 17, 2001

White talks with Jude Rolfes.

October 21, 2001

White talks with Stan Horton.

October 22, 2001

White talks with Stan Horton and attempts to reach Ken Lay by telephone. Lay returns the call, but the two do not connect.

Enron acknowledges SEC inquiry into off-balance sheet partnerships.

October 23, 2001

White asks OGE for an additional 90-day extension beginning on November 20, 2001. OGE does not act on his request.

October 24, 2001

White sells 43,000 shares of Enron stock for \$692,300.

White sells 60,000 shares of indirectly owned Enron stock (CSFB Family Partnership) for \$969,000.

White sells 18,663 shares of indirectly owned Enron stock (CSFB Personal) for \$301,000.

White talks with John Duncan, member of Enron Board of Directors.

Andrew Fastow steps down as CFO of Enron.

October 26, 2001

White meets with Chris Holmes.

October 29, 2001

White meets with John Carr, EES executive.

October 30, 2001

White sells 86,709 shares of Enron stock for \$1.11 million.

White talks with Jude Rolfes.

White talks with Robert Hurt.

October 31, 2001

White talks with Robert Hurt.

Enron announces that the SEC inquiry has been upgraded to a formal investigation.

Enron announces formation of the Powers Commission to conduct an independent investigation.

November 1, 2001

White talks with Norm Blake, member of Enron Board of Directors, and with Cliff Baxter, Enron North America Chairman.

November 4, 2001

White talks with Stan Horton.

November 5, 2001

White talks with Stan Horton and tries unsuccessfully to reach David Haug.

November 6, 2001

White talks with Stan Horton, and tries unsuccessfully to reach Horton a second time that day.

White tries unsuccessfully to reach David Haug.

November 7, 2001

White talks twice with Robert Hurt and once with Jude Rolfes. He tries unsuccessfully to reach Stan Horton.

November 8, 2001

White talks with Stan Horton.

Enron announces that it is revising its financial statements to account for \$586 million in losses.

November 13, 2001

White talks with Jude Rolfes.

November 20, 2001

White talks with Chris Holmes.

November 21, 2001

White talks with Robert Hurt.

November 26, 2001

White talks with Jude Rolfes and Stan Horton and tries unsuccessfully to reach Robert Hurt.

November 28, 2001

White talks with Jude Rolfes, Chris Holmes and Stan Horton. He talks twice with Robert Hurt.

Dynegy backs out of merger deal with Enron.

November 29, 2001

White tries unsuccessfully to reach Robert Hurt, and speaks with him later in the day.

December 2, 2001

Enron files for bankruptcy.

December 3, 2001

White talks twice with Jude Rolfes and once with Robert Hurt.

December 4, 2001

White tries unsuccessfully to reach Robert Hurt.

December 5, 2001

White tries unsuccessfully to reach Robert Hurt.

December 8, 2001

White talks with Robert Hurt.

December 10, 2001

White talks with Robert Hurt and Stan Horton.

December 16, 2001

White tries unsuccessfully to reach Robert Hurt.

December 19, 2001

White talks with Robert Hurt.

January 10, 2002

White talks with Robert Hurt and Dan Leff (affiliation unknown at this time).
White meets with Chris Holmes.

January 16, 2002

White talks with Joe Sutton.
White meets with Stan Horton.

January 17, 2002

White disavows his options to buy 665,342 shares of Enron stock. White also requests another extension from OGE; there is no indication that OGE acted on his request.

January 24, 2002

White talks with Stan Horton.

January 25, 2002

Cliff Baxter commits suicide.

January 26, 2002

White talks with Robert Hurt.

January 27, 2002

White talks with Robert Hurt.

January 30, 2002

White talks with Robert Hurt, Dan Leff, Jude Rolfes and Marte Sunde.

February 2, 2002

White talks with Robert Hurt.

Senator DORGAN. Mr. Secretary, let me begin by asking some questions about the pricing in the California marketplace. Are you familiar with a Steve Barth, former Vice President of EES?

Secretary WHITE. Yes.

Senator DORGAN. Let me read you what Steve Barth said. He said, "Thomas White told us that the California electricity crisis was our chance to turn EES into a profitable unit of Enron." He said the energy crisis in California would put EES on the map. Is that an accurate statement?

Secretary WHITE. Well, I hope it would be, because our purpose in the California energy market was to lower prices for consumers and for our customers, and so risk management of commodity price exposure was a principal part of our product offering, and the more volatility in energy markets you get, the more important that risk management is.

Senator DORGAN. Now, Secretary White, the FERC document I have in my hand says that EES, which is your sister organization from which you purchased power—

Secretary WHITE. EPMI, or EES?

Senator DORGAN. I am sorry. EPMI had some of the highest rates in the industry, and you purchased a substantial quantity of their power, did you not?

Secretary WHITE. We only purchased power from EPMI if it was the most competitively priced in the market. We shopped for power to sources other than EPMI when we didn't like the pricing we got from them.

Senator DORGAN. But what the FERC document shows is that you were actually EPMI's largest customer.

Secretary WHITE. Well, that's perhaps true, if they had the best pricing.

Senator DORGAN. But the FERC documents also show EPMI had the highest prices.

Secretary WHITE. That may not have been true 100 percent of the time. My point is that we were not interested in finding the most costly power in the market because we couldn't pass the price of that on to our customers, who had signed up commodity deals with us in California, where their price exposure was transferred to us, so it wasn't in our commercial interest to escalate the price of power or buy the most expensive power in the market.

Senator DORGAN. Except, Secretary White, the documents at FERC suggest you did just that. They suggest that EPMI, which was a sister organization in your corporate shell, was selling the highest cost power, and you were, in fact, the biggest customer buying the highest cost power in the market.

Secretary WHITE. I don't think that's the case, and further, let me—

Senator DORGAN. I have the FERC documents that say that is the case.

Secretary WHITE. Let me explain very clearly what our relationship was with EPMI. For the commodity component, the energy component of our offering, we sought in the competitive California market the cheapest price for that component we could find. Once we had established who we were going to buy that commodity from, the scheduling of that flow of that commodity and all the details with the ISO, the state's independent system operator, was handled through EPMI for a fixed rate on a commercially arm's length basis. In other words, they sleeved the transaction for us of the commodity that we purchased.

Senator DORGAN. Mr. Secretary, let me read you a couple of things that will tell you why I ask these questions. A series of traders were interviewed, those who were trading power, and here is what they said. They said, Enron held the transmission rights on Path 26, which is the path between Northern and Southern California, a key transmission line connecting Northern to Central California, and also connecting to Path 15, a major bottleneck grid.

About a dozen traders have been interviewed. They said they began manipulating California's power grid beginning in February 2000, continuing until the spring of 2001. These are Enron traders. The practices engaged in resulted in two days of rolling blackouts.

Secretary WHITE. Are they wholesale traders?

Senator DORGAN. Yes, but I want to get to the point of how the retail side enabled this to happen, according to the traders. They said, "What we did was overbook the line we had the rights on dur-

ing a shortage or in a heat wave. We did this in June 2000, when the Bay Area was going through a heat wave, and the ISO could not send power to the north.”

“ISO has to pay Enron to free up the line in order to send power to San Francisco to keep the lights on, but by the time they agreed to pay us, rolling blackouts had already hit California and the price of electricity went through the roof. The skyrocketing power prices then enabled Enron Energy Services to go out and sign the contracts with businesses who feared they would be hit again with expensive electricity bills.” Again this is Steve Barth, former EES executive.

He said, “This was like the perfect storm. First our traders were able to buy power for \$250 in California, sell it to Arizona for \$1,200, then resell it to California for five times that amount, and then EES” (the organization you ran) “were able to go in to large companies and say, well, sign a 10-year contract with us and we will save you millions.” This is different hands of the same company setting up businesses: you go in and you sign them to a 10-year contract for mark-to-market and claim immediately income which you have never received, for power which you have not yet sold.

Tell me what is wrong with that.

Secretary WHITE. Well, there are several things wrong with that. The first thing wrong with it is, the traders in their scheduling at wholesale level were never under our control in the retail business. We dealt with them on an arm’s length basis.

Second, we already had a bunch of contracts in place that owed commodity to retail customers in the State of California. The escalation of prices in the market would hurt us economically, EES, in satisfying the contracts we already had in place with those customers.

The trading strategies employed by the wholesale business as outlined in the trading memos were not internal to EES. We had nothing to say about them, and I was not aware of those trading strategies as we ran our business in California.

Senator DORGAN. Is it not the case that EES and EPMI sat at the same trading desk every day?

Secretary WHITE. We had—our traders were in Houston. EPMI’s West Coast operation I believe was in Portland.

Senator DORGAN. And you did not have traders on the West Coast?

Secretary WHITE. No, not to my knowledge. Our commodity trading operation was based in Houston. EPMI’s trading operation, as I understand it, was based in Portland.

Senator DORGAN. Mr. Secretary, one of the things that appears to me to represent, as Mr. Barth says, the perfect storm here—an ability of a company with several different tentacles to be able to jointly create a system of dramatically increasing prices—was a situation in which the wholesale pricing developed schemes and strategies that were working very, very well, so that the wholesale side of Enron was making a fortune. Would you agree that the wholesale side was extraordinarily profitable during this time?

Secretary WHITE. Well, if you just read the annual report of 2000, the wholesale business in total, I have no idea how much of

it came out of California. They were a global operation, but I think they made over \$2 billion pretax. In the retail business we were very small. I think our net income was more like, or our pretax income was more like \$160 million, and so we were a very small business.

Senator DORGAN. I will get to yours in a moment, but is it not the case the wholesale side was extraordinarily profitable as a result of the pricing strategies in California during the crisis?

Secretary WHITE. I don't know that to be the case.

Senator DORGAN. The answer is yes. You know that.

Secretary WHITE. If it is, you ought to get someone from the Wholesale Group in here to tell you that who ran the business.

Senator DORGAN. Well, maybe we will do that. I will suggest to them that you invited them, and perhaps we will do that. In the meantime, you know that the wholesale side was making a fortune at a time when the California crisis was ratcheting up prices, and my point is this: the retail side was losing money. In fact, if you knock out the gimmicky accounting, the retail side never made a penny.

Secretary WHITE. What are you talking about, the gimmick of accounting.

Senator DORGAN. I am talking about the mark-to-market accounting in which you were claiming revenues that you did not have for power that had never been delivered.

Secretary WHITE. Well, let's talk about mark-to-market accounting right now, then. Mark-to-market accounting for future energy contract was the standard established by the FASB for the accounting of those types of contracts. It was standard throughout the industry. It was standard throughout Enron as a member of the industry. It was fully disclosed as the style of accounting associated with this. We didn't have the option in the retail business to account for long-term energy contracts on an accrual basis.

Senator DORGAN. Did you have the option when you mark-to-market of making decisions about whether states would be deregulated in the future and therefore decrease energy prices, which allowed you to mark the profits on your books? Is it not the case that that assumption you made is what created the profits, otherwise you did not have profits?

Secretary WHITE. We did not control the forward pricing curves in retail that—against which our deals were priced.

Senator DORGAN. Mr. Secretary, we will talk about that some more, but the fact is, you did have that capability, because there were certain assumptions in which you made that mark that allowed you to create income that did not exist.

Secretary WHITE. Well, the question of whether it didn't exist is a different question, but any mark-to-market process includes assumptions and includes those things that go into establishing the forward pricing curve. That is why, when a company uses mark-to-market accounting, it is fully disclosed in the financial reporting of the company.

Senator DORGAN. One last question, and we will have several rounds, but you know, we have had people sitting at that table who lost their life's fortunes. We have had people who were investors

in Enron that lost everything. We have had employees who lost their jobs. How much money did you make working for Enron?

Secretary WHITE. I couldn't tell you. I'd have to provide it for the record.

Senator DORGAN. Is it over \$10 million?

Secretary WHITE. Yes.

Senator DORGAN. Over 20?

Secretary WHITE. I don't know.

Senator DORGAN. Over 30?

Secretary WHITE. I would have to add it up.

Senator DORGAN. We will add it up for you.

But my point is this. There is a lot that happened inside the Enron Corporation that raises a great many questions. I have not yet, I guess, gotten to the bottom of whether the ability of the retail side to enable the wholesale side to ratchet up power cost, put enormous profits on the books on the wholesale side, and show losses on the retail side has benefited the entire corporation. I do not think we have gotten to finality on that point. I will come back to that.

Secretary WHITE. Can I respond to that?

Senator DORGAN. Yes, of course.

Secretary WHITE. Just one minute. The size of retail relative to wholesale, with us being a very small business and them being enormous, the largest wholesale energy marketer in the country both in gas and electricity by an order of magnitude, would seem to suggest to me that their ability to make enormous amounts of money leveraged off our very small position would not hold up to scrutiny. We were a very small startup business compared to the magnitude and scale of the wholesale activity.

Senator DORGAN. Well, I would just observe that FERC has provided us information that suggests you were the largest purchaser from your sister organization, EPMI. The way it looks to me is that one hand could not work unless the other hand was clasping it, but I will ask more about that.

Senator McCain.

Secretary WHITE. And by the way, I would—because the West Coast market has now been examined for two years, since the event, I look forward as much as anyone else to the completion of the investigation by the FERC experts in this matter—

Senator DORGAN. Mr. Secretary—

Secretary WHITE.—to see what it is they conclude.

Senator DORGAN. Mr. Secretary, as you know, FERC did its best imitation of a potted plant for two years while Californians were cheated and defrauded in my judgment; this is not petty theft, it is billions of dollars—billions of dollars that were taken from the California customers. Enron was involved and some other companies as well, but the evidence at Enron, it seems to me, suggests that a substantial amount of activity was going on that enabled that to happen. That is what we are inquiring about today.

Senator McCain.

Senator MCCAIN. Mr. Secretary, absent from your statement was any sentiment about what has happened to the workers, the shareholders and the retirees who have been afflicted by this terrible

scandal that has shaken the confidence of every American. Do you have any comments about them?

Secretary WHITE. Yes. I think it's a tremendous tragedy to a wide range of stakeholders, as you would suggest. Every employee of Enron was also a shareholder and in many cases an optionholder, so starting with the employees of Enron that have been damaged by this, many of whom are personal friends of mine, many of whom I worked with over those 11 years, I think it is an absolutely terrible tragedy that has occurred, and I fully support the actions by the agencies that the Chairman talked about to get to the bottom of it and hold people accountable that were responsible for it.

Senator MCCAIN. Thank you, Secretary White. No further questions.

Senator DORGAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. The point for me, Secretary White, is the government Executive Branch agencies are investigating Enron's activities. The question for me is whether they are looking at your role as a senior executive, and I want to ask you first whether the Federal Energy Regulatory Commission has contacted you about Enron Energy Services' activities in West Coast markets, including any transactions between your former company and Enron Power Marketing or any other entity?

Secretary WHITE. No.

Senator WYDEN. They have not indicated that they are looking at any of your work as a senior executive?

Secretary WHITE. Me personally?

Senator WYDEN. Yes.

Secretary WHITE. No. I've had no contact with the FERC.

Senator WYDEN. Has the Securities and Exchange Commission contacted you about Enron Energy Services' accounting methods, or your former company's reported profits?

Secretary WHITE. No.

Senator WYDEN. Has the Securities and Exchange Commission contacted you about connections between your contacts with Enron executives and your sales of Enron stock?

Secretary WHITE. No.

Senator WYDEN. Did anyone at the Defense Department or the White House ever contact you about your commitments or ethical obligations to sell Enron stock following your confirmation as Secretary of the Army?

Secretary WHITE. I've had constant discussions with not only the ethics officer inside the Department of the Army, but also DOD's General Counsel, as I think all political appointees have in the execution over the months of their ethics agreements, so there has been a lot of discussion, as well as with the Office of Government Ethics.

Senator WYDEN. Could you describe further those discussions and what issues were addressed?

Secretary WHITE. Well, the discussions flowed naturally from the ethics agreement that I signed, which had in it divestiture requirements for assets, some of which was Enron stock that had to be divested, and we have had, as I went about complying with the eth-

ics agreement, the dialog that you would expect as I moved to completion of the agreement.

Senator WYDEN. Has the Defense Department Inspector General ever asked you to answer questions or to provide information about your use of military aircraft for trips to Colorado in March, and to Florida in February, where it appears you were on personal business?

Secretary WHITE. The Department of Defense Inspector General has an ongoing investigation of the use of military air by service secretaries, not just me but the other secretaries as well, and that investigation is ongoing, and when it is completed I'm sure the results will be presented to the Secretary of Defense, and he will take appropriate action.

Senator WYDEN. Now, let me turn to your statement. You say in your statement this morning that you were never aware of the Enron memos describing trading strategies. Were you aware that employees of your company, Enron Energy Services, participated in meetings with the lawyers who wrote these memos at which trading strategies were discussed?

Secretary WHITE. No.

Senator WYDEN. Now, this was in the fall of 2000, before the memos were written. Your employees also received e-mails on how Enron should respond to subpoenas seeking information about Enron trading strategies. My question is, why did you have your employees participate in meetings about Enron trading strategies and be part of the litigation team for responding to subpoenas if your company on your watch had no involvement in the trading strategies?

Secretary WHITE. The litigation that flowed from the power situation on the West Coast in 2000 and 2001, the General Counsel and other attorneys of Enron Energy Services participated in corporate discussions of the legal strategy of how to respond to the subpoenas coming from various entities. From that perspective, the two specific power memos that were released by the FERC and referenced, I was not aware of when it was done, nor was I aware that we had anyone at the meetings during which these memos which describe wholesale trading strategies were created.

Senator WYDEN. Did Jeff Dasovich, Sue Mara or Mona Petrochko work for Enron Energy Services?

Secretary WHITE. Not to my knowledge. They could have. We had a big organization. I am not familiar with either person.

Senator WYDEN. Well, these are again documents that we have received from the various state Attorneys General indicating that they were employees of EES. So you were not aware that Mr. Dasovich participated in any of the trading strategies, such as Death Star or Fat Boy or others in detail?

Secretary WHITE. No.

Senator WYDEN. Mr. Chairman, for purposes of this round I am going to stop here, but I will say that I find it remarkable that the Federal Energy Regulatory Commission and the Securities and Exchange Commission, in particular, are not looking at the role of Mr. White in these matters. Certainly the evidence that is on the record to date suggests that, at a minimum, to have a thorough and timely Executive Branch inquiry, the Securities and Exchange

Commission and the Federal Energy Regulatory Commission should not be looking just at Enron, but they also should be looking at the role of Mr. White as a senior official.

I said at the outset that what I am concerned about here is whether there is a textbook case of an Administration insider receiving kid glove treatment, and if the Securities and Exchange Commission and the Federal Energy Regulatory Commission are not in contact with Mr. White, for the life of me I cannot figure out why those two agencies in particular are not looking at his role in these matters, and I look forward to the next round.

Senator DORGAN. Senator Smith, you were not here when we did opening statements. Do you have a statement?

**STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Yes, Mr. Chairman, if I may. I would just include it in the record.

Senator DORGAN. Without objection.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON

Mr. Chairman, thank you for holding this hearing today on the perspective of improving corporate responsibility. So many investors in this country have lost hope. They have lost hope that honesty and integrity guide the businesses of America. A sad state of affairs has led us to create a system of increased checks and regulation. I am committed to preventing further corruption and dishonesty from entering into corporate America. I am proud of the legislation passed unanimously by the Senate last week, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, and I will continue to fight for needed reform.

In the weeks before this bill was passed, I proposed an Investors' Bill of Rights. I worked with colleagues on both sides of the aisle to come up with bipartisan goals to prevent corporate abuse and protect investors. I feel that there are changes that investors should be able to count on coming out of the United States Congress. Many changes will be made as a result of this bill. . . and in other areas we may have to work further.

I believe that investors must have access to information about a company. We should ensure that every investor has access to clear and understandable information needed to judge a firm's financial performance, condition and risks. The SEC will have the power to make sure companies provide investors a true and fair picture of themselves. A company should disclose information in its control that a reasonable investor would find necessary to assess the company's value, without compromising competitive secrets.

I believe that investors should be able to trust the auditors. Investors rely on strong, fair and transparent auditory procedures and the concept of the Oversight Board in the Sarbanes bill is a sound one.

I believe investors should be able to trust corporate CEOs. Unlike shareholders or even directors, corporate officers work full-time to promote and protect the well-being of the firm. A CEO bears responsibility for informing the firm's shareholders of its financial health. I support the concept of withholding CEO bonuses and other incentive-based forms of compensation in cases of illegal and unethical accounting . . . further I do believe that CEOs must vouch for the veracity of public disclosures including financial statements.

I believe that investors should be able to trust stock analysts. Investors should be able to trust that recommendations made by analysts are not biased by promises of profit dependent on ratings. It is only common sense that there should be rules of conduct for stock analysts and that there must be disclosure requirements that might illuminate conflicts of interest.

Finally I believe that we should be able to rely on the Securities and Exchange Commission to protect investors and maintain the integrity of the securities market. Current funding is inadequate and should be increased to allow for greater oversight—ensuring investors' trust in good government.

During the debate on this bill my attention has been called to the plight of public pension systems, such as Oregon's Public Employment Retirement System—known by the acronym PERS. PERS was invested in both Enron and WorldCom stock and has been hit hard by the debacles that occurred in each company. The PERS system lost about \$46 million after Enron self-destructed and another \$63 million following the WorldCom scandal.

These losses occurred because false profits were inflated and corporate books were doctored. Under the PERS system, an 8 percent rate of return is guaranteed for the 290,000 Oregon active and retired members of PERS. Oregon taxpayers have to make up the difference following an Enron debacle or WorldCom scandal—and my state's budget is not prepared for this kind of loss.

Further, I am interested in finding out if there is more we can do. I am asking the General Accounting Office, in consultation with the Securities and Exchange Commission and the Department of Labor, to report to Congress on the extent to which Federal securities laws have led to declines in the value of stock in publicly traded companies and in public and private pension plans.

I believe that a study of this nature is necessary because many public and private pension plans continue to rely on the continued stock growth in publicly traded companies—much like the PERS system. I believe that such a study would provide the needed information so public and private pension plans can reevaluate future investments in publicly traded companies.

We cannot stand by and watch our hard working Americans' pension systems ruined while corrupt corporate executives take advantage of investors. I am proud of the work the Senate has done in the last week in creating accountability and responsibility in corporate America and look forward to working on this issue in a way that will help the investors and pensioners in the PERS system in Oregon.

Thank you Mr. Chairman.

Senator SMITH. Perhaps I will just ask a couple of questions. Secretary White, you have had a tough time in this job, and I think sometimes we do not say thank you for the public service you give, but I know you make a lot less in this job than you did in your former. Is that a fair statement?

Secretary WHITE. Yes, sir, it is.

Senator SMITH. I was concerned, however, when I read recently, I believe it was on a television show, that it was rumored you were going to take the Fifth Amendment today. You clearly are not taking the Fifth Amendment today. Did you seriously consider taking the Fifth Amendment?

Secretary WHITE. No, I did not.

Senator SMITH. Who began that rumor, then?

Secretary WHITE. I would presume the same press that published it.

Senator SMITH. When you went through your confirmation hearing, did you provide all the information that is now being requested of you? Are there new things to be learned of you now that we did not learn when you were confirmed as Secretary of the Army?

Secretary WHITE. I don't believe so. I think that I made full disclosure as required. It was reviewed by the Senate Armed Services Committee in some detail, as well as the Office of Government Ethics and others responsible for that, and based upon that information I was confirmed.

Senator SMITH. Thank you, Mr. Chairman, and I commend you, Secretary White, for not taking the Fifth Amendment. I personally would find it very distressing if anyone in the Bush administration ever took the Fifth Amendment before a committee of this Congress.

Secretary WHITE. So would I.

Senator DORGAN. I should say to the Senator from Oregon that there was never an indication that Secretary White would not be

here, and there was never an indication that he would assert Fifth Amendment rights. We were always informed that when we invited him to testify, that he would be here to testify.

Secretary WHITE. Yes, sir.

Senator DORGAN. Senator Boxer.

Senator BOXER. You can go to Max first.

Senator DORGAN. Senator Cleland.

Senator CLELAND. Thank you very much.

Mr. Secretary, the first comment I had when we had Ken Lay here, my first observation about the Enron ethics and behavior of top leadership at Enron was just a recall of something that I learned when I was in the military, especially in Vietnam, is that in combat officers eat last. Have you ever heard that phrase? Are you familiar with that?

Secretary WHITE. I absolutely have, and I practiced that.

Senator CLELAND. As did I, and yet my observation when Mr. Lay was here, and it has been confirmed by others, when Mr. Skilling and others attempted to appear, was that the top officers of Enron, when push came to shove and the stock prices began declining, that the top 28 officers at Enron cashed in stock worth about \$1 billion, and that in the economic turmoil, the economic warfare that they faced, Enron officers ate first, which to me is very disconcerting.

You have got a great history of being in the military. With the ethics of the military which you and I share, then I am disturbed that you spent 11 years with a crowd where Glen Dickinson, a former Director of Energy Services, has reportedly described the culture of Enron as, close the deal, worry about the details later, and Enron, as I pointed out, has now become the poster boy for the infectious greed description by Mr. Greenspan a couple or 3 days ago describing certain corporate misdeeds. I wonder how you square that.

I mean, you were in the Army for 28 years. You have a certain sense of ethics, and then you were at Enron for 11 years. Did you find yourself whipsawed there between the ethics of two different entities? Did you see at Enron an infectious greed? Did you see officers eating first? Did you see what has been described as, close the deal, worry about the details later ethics?

Secretary WHITE. I have to say in start, the answer to your question, that I, like thousands of other people, have been appalled and outraged by the facts that have come to light since I left the corporation, and particularly the facts that have come to light since 16 October of last year, when the earnings release was made and earnings were restated, and other facts have come to light that certain corporate officers were benefiting from arrangements that they had made at the expense of Enron shareholders, and that as an Enron shareholder, and someone who believed in the company from the day that I entered it until the day I left it, I am appalled by what has happened.

I cashed out part of my Enron stake because I had to satisfy the divestiture requirements of joining the Government. I took straight over the cliff, along with thousands of other investors, in my particular case 665,000 options that I never cashed in that I sent back to the company because I believed in the company, up until the

revelations that came out following the third quarter earnings release of nine months ago.

This was a corporation that was rated most innovative in the country six years in a row by *FORTUNE* magazine, and thousands of us that worked at that company were proud of what we were accomplishing, believed that energy markets should deregulate, believed that that was the best way to give consumers choice and lower prices. That was the crusade we were on, and so I am ashamed of what has happened to that corporation and the damage that it has done to all of us and thousands of people, the pipeline group I used to run, third generation Enron employees, field engineers, is a tremendous tragedy in Enron.

And I will also say I am responsible as an officer of the company for the portion of that company that I ran, Enron Energy Services, and the deals that we put together within the accounting structure that was accepted and was the standard in the industry, I stand behind, that were signed and the right deals to do, and were properly accounted for at the point that we signed those up.

Senator CLELAND. That is my next question. Were you concerned, were you worried when you signed off on Enron Energy Services' use of accounting practices that booked profits based on optimistic projections of future market conditions, that investors were getting a less than honest picture of Enron's earnings?

Secretary WHITE. Well, the question, Senator, is, number 1, is mark-to-market accounting appropriate, which is an FASB question to answer. It happens to be the accounting standard of the industry, and second, were the forward curves for energy against which the deals were priced, were they accurate, were the assumptions reasonable to be made, and from our perspective in the retail business, we did not control the curves. They moved around frequently.

Sometimes we made money from the change in the curves. A lot of times we lost it. We didn't control the curves as they were structured. They were the best estimates of the forward deal, and that's the way the business was run, not only in the retail business but in the wholesale, as well, and in every other company that competed in this marketplace of forward energy products.

Senator CLELAND. My time has expired, but you were Vice Chairman of Energy Services during a time when it was being used by Enron as part of the so-called Fat Boy scheme. Now, Fat Boy sounds almost like a military operation, but that scheme allowed Enron to be paid for artificially created excess electricity generation, yet you have reportedly said you were unaware of Enron's use of this strategy, because Energy Services was a customer of Enron's Wholesale Group and you were not privy to their strategies, is that correct?

Secretary WHITE. Yes. What we presented the Wholesale Group with, specifically EPMI, was, here's the load that we have in the State of California that's represented by our retail customers, and here's the money for scheduling with the ISO, our load, and if we bought the commodity from a third party, here's the fee that we will pay you to sleeve that commodity and schedule it.

What the Wholesale Group did with that load between themselves and the ISO was the Wholesale Group's business. It was not

in our interest to see the price of power escalate in the State of California from a retail perspective, so the Fat Boy setup, or Ricochet, or anything else that showed up in those power memos we were not participants in. That was not our interest.

The reason we were in the California wholesale power market is, we had retail load. We were not in the California power market for the sake of buying and selling and swapping and trading, and whatever else, electricity. We were there to serve retail customers.

Senator CLELAND. Thank you very much, Mr. Secretary. My time is up.

Senator DORGAN. Mr. Secretary, let me just make a point on this issue. We will come back to it, but the point in the memorandums, with respect to Fat Boy, for example, which was a scheme or a strategy, is that the scheme of Fat Boy could not possibly work without EES.

Secretary WHITE. You mean without our load?

Senator DORGAN. Yes.

Secretary WHITE. Well, what would you like to do with my load? I have a customer that has to be served. I have to get it scheduled with the ISO. I hire EPMI to do that on an arm's length basis, and they go schedule it. It's got to be scheduled.

Senator DORGAN. Well, I will turn to Senator Boxer quickly, but EPMI, which is another Enron organization—

Secretary WHITE. That's the Wholesale Power Group.

Senator DORGAN. Total sales, this is fourth quarter 2000, \$178 million, \$178.2 million, total purchases, \$178.1 million. They only delivered 98,000 megawatts, so there is massive purchasing going on, and the allegation has been made that EES substantially inflated their load routinely in order to create this congestion.

Secretary WHITE. Why on earth would we do that? There is no—

Senator DORGAN. Because it is the only way that Get Shorty works, or Fat Boy works.

Secretary WHITE. But whose strategy was Get Shorty?

Senator DORGAN. It was the Enron Corporation strategy.

Secretary WHITE. No, it was the Wholesale Group's strategy.

Senator DORGAN. It is still part of the Enron Corporation. You are all kissing cousins here. It is the same umbrella.

Secretary WHITE. Let me tell you something, when we had our profit and our numbers and our targets to make and the Wholesale Group had separate targets to make, we were not kissing cousins when it came to the arm's length arrangements between the groups.

Senator DORGAN. Well, when the difference was between the interests of the company, the Enron Corporation, or your divisions, which interest wins?

Secretary WHITE. The division.

Senator DORGAN. I do not think the CEO of the company is going to let you get by with that very long.

Secretary WHITE. That's the way the business ran.

Senator DORGAN. Well, I will come back to that. Senator Boxer. Senator BOXER. Mr. Chairman, I never saw so many smart people running away from the truth.

Secretary WHITE. I'm not running away from the truth.

Senator BOXER. I am making a comment, and I have a number of questions, and I hope my chair will allow me to stay as long as it takes, because there are so many things I want to ask you on behalf of Californians and shareholders, and people who count on pensions, and I have to say you came to the California market to do good, and here is what you did.

Before we get to that, I want to show this other—here is what happened while you were there. This is what happened to the price, and take that overlay off. It went straight up to the sky, and our state almost went bust, so it did not work out the way you had hoped.

Secretary WHITE. I absolutely agree with what you just said.

Senator BOXER. I did not ask you a question. You compared yourself to the others that got hurt and were stunned, and it is awful, and I would ask you in the name of—I do not even know the word—candor not to do that. From what I understand you made over \$50 million in your time at Enron, not counting stock options and the rest. The average American income, per capita, is about \$25,000 a year, so let us just not compare yourself to those people or, frankly, I cannot compare myself, because I do better than that.

Secretary WHITE. Good.

Senator BOXER. Please allow me to make my point. You said you gave up your options, but this is after you made about \$50 million, but we will get the exact amount from the company, and sold more than \$12 million worth of stock, so I just do not think you compare to someone like Elisa Hollis, and I ask unanimous consent to put this statement in the record.

Senator DORGAN. Without objection.

Senator BOXER. “I was employed by Enron for 5½ years and was one of the thousands laid off in December . . . I was surrounded by dedicated, hard-working, decent people and I was proud to be part of it . . . The dishonorable actions of a few greedy Enron executives ruined my, and countless others’, financial security. I lost my job. My severance payment was ⅓ of the amount they agreed to when they hired me . . . And of course my retirement account was wiped out. The losses from my 401(k) and stock were staggering: once valued at more than \$140,000, are gone forever. In short, my family has been financially devastated . . . My husband is a carpenter, making a modest wage. His income and my unemployment leaves us \$1,500 short every month, whereas before, we had that much to spare. And guess where we put most of it? . . . The people whose actions caused this to happen were already rich by most people’s standards. They shouldn’t need legal incentive to perform their fiduciary duties ethically. Just moral decency,” and the rest will go in the record.

[The prepared statement of Ms. Hollis follows:]

PREPARED STATEMENT OF ELISA HOLLIS

I was employed by Enron for 5½ years and was one of the thousands laid off in December. My career at Enron began as a part-time implementation specialist and ended as manager. I was surrounded by dedicated, hard-working, decent people and I was proud to be a part of it.

I am here today because I am extremely concerned that the 401k reform bill that was recently passed is completely inadequate, and because of the negative implications on the privatization of social security. It must be made absolutely clear that

there will be meaningful, unpleasant consequences to anyone trying to cheat their employees out of their retirement savings.

The dishonorable actions of a few greedy Enron executives ruined my, and countless others', financial security. I lost my job. My severance payment was one fifth of the amount they agreed to when they hired me. They found a loophole to avoid the 60 day advance notice of layoff or payment in lieu of notice. My family's monthly expenses had been well within our means, but now I use credit cards to pay for basic necessities. Health insurance alone consumes 20% of our monthly income. My stock options, which I was counting on to help pay for my daughter's college education, are completely worthless. She's a freshman in high school, and while I have contributed to a college savings plan, it's only enough to get her started. And if I should fall behind on any of my current payments, obtaining a loan for her will be impacted. And of course my retirement account was wiped out. The losses from my 401k and stock were staggering: once valued at more than \$140,000, are gone forever. In short, my family has been financially devastated.

We moved to Houston from beautiful Central Pennsylvania because Enron bought the company I worked for, then closed down its Pennsylvania office. It was move, and have a chance for a great career, or lose your job. My husband is a carpenter, making a modest wage. His income and my unemployment leaves us \$1500 short every month, whereas before, we had that much to spare. And guess where we put most of it? While I have recently performed some independent contracting, I am still looking for work, and despite what I consider to be a strong resume, I have yet to receive an interview let alone a job offer. Is this because of the weak economy, or is there a stigma associated with having worked for Enron? Many of my former colleagues are in the same situation as me.

The people whose actions caused this to happen were already rich by most people's standards. They shouldn't need legal incentive to perform their fiduciary duties ethically. Just moral decency, really. But it's obvious that they do need incentive. So we have to make sure that new laws are put in place to help convince any Enron wannabes that there will be meaningful, unpleasant consequences for greedy, self-serving behavior that harms innocent people. And the law must provide a means for restitution for those they harmed.

The Boehner bill that was recently passed does not provide this. In fact, much of what it includes, Enron already provided to its employees. This bill cannot be allowed to be the only legislative reform adopted in response to what happened at Enron.

Senator Kennedy's bill addresses so many of the problems that Enron brought to light and will make a real difference. Why is it so hard to pass a law that makes clearly unethical behavior illegal? I hope public awareness will help to get the Kennedy bill enacted.

The final point I'd like to make is that social security and pension plans must not be privatized, but should remain a guaranteed form of retirement income. Otherwise, they'll be at risk for the same kinds of Enronian abuses the country, and I, are so angry about.

Thank you for inviting me to participate in this discussion.

Senator BOXER. Now, here is this woman, she says that once in Houston she attended most of these floor meetings held semiannually, which are typically presented by upper level executives. She says, "I was in attendance at one such floor meeting at which Mr. White was the presenter." She thinks it was December 2000, or early January 2001. That is 11 months before bankruptcy. "The meeting was held on the fifth floor of the 500 Jefferson Building . . . There were probably 60 people in attendance . . . someone asked Mr. White specifically regarding his opinion of the current stock price and where it might go from there. Mr. White responded by extolling the past performance of Enron's stock, citing how wealthy it had made him and so many other Enron employees. He encouraged us all to take full advantage of our investment opportunities as Enron employees, and expressed his opinion that its value should rise to \$120 by the same time next year." The rest will go in the record.

[The letter of Ms. Hollis follows:]

July 8, 2002

Dear Senator Boxer,

Your aide, John Hess, spoke with me recently regarding my recollections of certain statements made by Tom White to a number of his employees. I am writing today as a result of Mr. Hess's request that I draft a statement detailing my recollections.

I was employed by Enron from April 29, 1996 to December 3, 2001. I was hired on April 29, 1996 by a company located in Pennsylvania, named OmniComp, that Enron purchased on January 1, 1997. OmniComp became a wholly owned subsidiary of Enron and a part of its Energy Services operations, of which Mr. White was Vice Chairman. Mr. White visited our offices in Pennsylvania on a couple of occasions and was involved in the decision to move our operations to Houston, which took place in early 1999. While I had little opportunity to interact in detail with Mr. White, he recognized me as a member of the OmniComp team, and we interacted on a superficial level on a few occasions.

Once in Houston, I attended most floor meetings, held semi annually, which were typically presented by upper level executives. I was in attendance at one such floor meeting at which Mr. White was the presenter. I do not recall the exact date of the meeting, and while it was noted on my electronic business calendar, that calendar was stored on my computer located in my Enron office, to which I no longer have access. My best guess is that the meeting occurred in mid December, 2000 or early January, 2001. The specifics I do recall are:

The meeting was held on the fifth floor of the 500 Jefferson Building (walking distance from Enron's main building at 1400 Smith Street). The space had recently been renovated and most of the offices had doors as opposed to cubicles. We convened in the open space between the rows of offices. There were probably 60 people in attendance.

That our stock was doing better than it ever had at the time of the meeting—in the mid 80's.

That someone asked Mr. White specifically regarding his opinion of the current stock price and where it might go from there. Mr. White responded by extolling the past performance of Enron's stock, citing how wealthy it had made him and so many other Enron employees. He encouraged us all to take full advantage of our investment opportunities as Enron employees, and expressed his opinion that its value should rise to 120 by the same time the next year.

I wish I still had access to the documentation I had as an Enron employee, as it would at the very least provide dates. I'm afraid this is the best I can do.

Good luck with your investigation!

Sincerely,

ELISA HOLLIS

Senator BOXER. I wonder if you got back to those people to tell them, be careful, do not put all your eggs in this basket. Did you ever do that?

Secretary WHITE. No, I never gave them personal financial advice.

Senator BOXER. OK. Well, I would say, Mr. Chairman, that it looks pretty clear that it: "encouraged us all to take full advantage of our investment opportunities".

I want to switch to this chart, this next chart. Secretary White, you made 74 phone calls. This is what you handed over to Congressman Waxman.

Secretary WHITE. Seventy-seven.

Senator BOXER. Seventy-seven phone calls during the period shown, all the while selling off your shares. I want to talk to you about the connection between the phone calls and the dates you sold. I want to put it into perspective.

Martha Stewart is being investigated by the SEC for a few phone calls. I am glad they are looking at what was going on there, but a few phone calls. The House is having hearings on Martha Stew-

art and insider trading. I wonder, have you been contacted by the SEC about these phone calls and your divestiture?

Secretary WHITE. No.

Senator BOXER. Well, Mr. Chairman, this is troubling to me, because I think if you are going to investigate someone for three or four phone calls, you ought to take a look at this. I want to have an overlay. Can we do the overlay, John?

I think what is important to note is, on May 24, you became Secretary of the Army, and what date did you become head of Pentagon Homeland Security, on October 3? Would you point that date out? So you made about, more than 50 phone calls after you were made head of Homeland Security. After we were attacked on 9/11 you made over 50 phone calls, and then—and then, I am just amazed that you had the time to do this.

Now, you have given two answers to the question, what did you talk about with these people who were Enron, a lot of them Enron insiders? First you said it was personal, then you said you did discuss the company. Which is it?

Secretary WHITE. Both. How could you not? It was in the newspaper every day. First of all—

Senator BOXER. How could you not what?

Secretary WHITE. The overall condition of Enron was front page news from 16 October forward.

Senator BOXER. It sure was, but wouldn't those people you called, some of whom were on the Board of Directors, have more information than was in the news?

Secretary WHITE. We didn't discuss it. We didn't have to discuss it. It was in the newspapers.

Senator BOXER. Let me note, and I will stop here and come back, that I tried to get in touch with all the people that you spoke to. They will not talk to me. They will not discuss what they talked about. They will not verify what you said, or say anything. Then we called their lawyers. They will not talk to me, either.

I will just say to you, Mr. Secretary, you are an honorable man. You are a man of great experience. Maybe you did not know too much about how this would look, but I just want to give you my opinion, as a former stockbroker many years ago. It does not look good to have all of these escalating number of phone calls, the divestiture of stock following those, calling all of those insider people. It just does not look right, just like it does not look right for Martha Stewart to call her best friend to talk about a number of things.

And the fact is, you say it was not necessary to talk to these people, it was on the front pages. Then why won't those people talk to me and just say, hey, it was on the front pages? So I would hope that the SEC would look at this and let us let them look at it without any particular agenda other than to find out the truth on this point, and this is my trouble with the SEC. I just do not see them doing what they should do. If there is no there there, they will figure it out, but it is not our job, but this is what Senator Nelson and I have put together from the information that we have, and it is very troubling to me.

The last point is, particularly after you had your personnel over there 24/7—

Secretary WHITE. Can I respond to all of this?

Senator BOXER. Yes. You had your personnel over there 24/7, and I do not think they had time to make any phone calls, period, not even to their mother.

Secretary WHITE. First of all, there were 77 contacts that I identified to Congressman Waxman. Fifty of those, 51 of those were from my home phone. This is over a seven- or eight-month period that we are talking about. Twenty-some were from my office. That is about three a month. That to me is not an outrageous amount.

Second point, most of the people that I talked to on this list, like Bob Hurt, are my old friends. They were my friends in the Army before we got together in Enron. They are my friends today. Most of them are gone from Enron. Fifty-some of these calls are from my home phone. Some of them were made by my wife, because in most of the cases my wife and the wife of the gentlemen that I worked with are good friends, and so I couldn't differentiate between those I made and those that she made.

Third, they are my personal friends. They were concerned about what had happened here on 11 September, and the war and the anthrax and everything that all of us have dealt with in Washington. I was concerned about their situation at Enron for all the points that you referenced with the lady that lost her job, and that was the nature of the conversation, and let me just say categorically that all of us on the Defense team have worked hard to prosecute this war.

Senator BOXER. I never said you didn't.

Secretary WHITE. Well, yes you did, in a way, and I just want to say that implying that 77 phone calls somehow detracted from my ability to run the Army and this war. I am just not going to sit here and accept that. I fundamentally disagree.

Senator BOXER. Sir, you have every right, and I close at this point, but I need to respond to you.

I hope the SEC—and I am going to call Mr. Pitt personally—is going to take a look at this, because I am not a prosecutor. All I know is, to me it does not look good, and where one makes a call from does not matter, or if one just says something to the person next to them. I know something I want to share, and not one of those people will take my call, not one of those people will answer the question, because I wanted to know—I did not want to do this. I wanted to know what the story was, and I cannot get one of those people to talk to me, to talk to anyone on this Committee. It is extremely frustrating.

The last point I would make is this. All of us went through a change on 9/11. You did, I did, every American did. I am speaking for myself and I believe for my colleagues. Things—the world changed for us. We were on edge for every minute of every one of those days, and after we had troops in Afghanistan it was the same thing, and all I am saying is, it is my opinion, and I know you are a very skillful man, but I believe in my heart of hearts that this does not look right to me.

I was not born yesterday. It does not look right, and I just have to say that, and I am going to turn this information to the SEC. I do not know what good it will do. I asked them to look at Mr. Skilling—I have not heard back yet—in terms of insider trading.

I asked them to look at Mr. Lay and I have not heard back yet, but that is where we are on that point.

Senator DORGAN. Senator Carnahan.

Senator CARNAHAN. Secretary White, when you left Enron your annual salary was \$5½ million. You subsequently sold Enron stock for \$12 million, and yet many Enron employees who lost their jobs following bankruptcy will not ever receive even the modest severance pay which they were due.

In light of the economic devastation experienced by so many of your former colleagues, do you still believe that your compensation level was appropriate?

Secretary WHITE. Yes. I think that it was approved under the compensation plan of the corporation by the Board of Directors. It was not at all unique to me, and let me express again my feelings of the scope of the tragedy that has impacted everyone.

Senator CARNAHAN. In your testimony today, you claim you carried out your responsibilities in an entirely ethical manner, but your records seem to show otherwise. As an Enron employee, you lobbied the military to privatize energy services, and when you became Secretary of the Army, you aggressively pursued this policy change. Only when pushed on the matter did you recuse yourself, and then only in part.

The government's ethical standards required that you sell your shares of Enron stock within 90 days. However, you failed to meet that deadline. You have not done everything you could do to avoid the conflict of interest. I wonder how you can claim, under those circumstances, to have conducted yourself in an ethical manner.

Secretary WHITE. Well, let me deal with the two parts of the question, Senator. The first is, utilities privatization. Utilities privatization was authorized by the Congress in the previous administration. The previous leadership of the Department of Defense set as a goal September 2003 to complete it. This is privatization of gas, electric, water, and wastewater utilities. It is absolutely the right thing for the Department to do, to get outside capital and expertise to do that. I have pushed it hard as Secretary.

Since I have been Secretary, Enron or any of its affiliates have not gotten a single shred of business from the Department of the Army and, in fact, in the one agreement they did have, they defaulted on it after they went bankrupt and the contract officer terminated it, so to my knowledge there is no relationship whatsoever between the utilities privatization business of the Army and anything that has to do, anything with Enron. It continues to be the right thing for us to do, and I will continue to push it.

On our ethics agreement, I was granted a 90-day extension by the Senate Armed Services Committee, of which you are a member, to that ethics agreement, and I completed my stock sale before the end of that agreement and, as I said earlier, I never cashed in, because they were out of the money, a large quantity of options that went along with it, so my contention in the opening, my opening statement that I've operated in an ethical manner both while at Enron and as the Secretary of the Army I stand by.

Senator CARNAHAN. Thank you.

Senator DORGAN. Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

Mr. Secretary, I am sure this is a very difficult time. We had you, as is required by the Constitution, in front of the Armed Services Committee and, upon examination and your approval there, certain agreements were brought out in which you agreed to the following, and this is a letter dated May 4, 2001, to the Acting General Counsel of the Army and designated agency ethics official, and it is a letter from you.

“As of May 15, 2001, or upon my appointment if appointed sooner, I will no longer be employed by Enron Energy Services, and I will request full and complete payment for all services rendered Enron Energy Services at that time. I will also receive a payment of \$1 million from the Enron Corporation upon my termination, as well as \$13 million in payment for my phantom stock award.”

Your letter further states, “I understand that this constitutes an extraordinary payment under such and such of the statutes, and therefore for 2 years after this payment is received I will not participate in any particular matter in which Enron Corporation is or represents a party unless I receive a written waiver pursuant to section such-and-such.”

You then list executive perks such as, stock options, cash balance retirement account, Enron savings plan, Enron stock ownership, and within 90 days of appointment I will divest myself of my Enron Corporation stock options, stock, and all the other things that I just mentioned there, the cash balance retirement account, the savings plan and so forth. Mr. Chairman, I ask that this letter in full text be included in the record at this time.

Senator DORGAN. Without objection.

[The letter of Mr. White follows:]

May 4, 2001

Mr. Tom Taylor
Acting General Counsel and
Designated Agency Ethics Official
Department of the Army
Washington, DC

RE: ACTIONS TO AVOID POTENTIAL CONFLICTS OF INTEREST

Dear Mr. Taylor:

Upon confirmation by the United States Senate to the position of Secretary of the Army, I will take the following actions to avoid potential conflicts of interest or appearances of a conflict of interest:

Enron Energy Services Incorporated

Employment. As of May 15, 2001, or upon my appointment if appointed sooner, I will no longer be employed by Enron Energy Services, and I will request full and complete payment for all services rendered Enron Energy Services at that time. I also will receive a payment of \$1,000,000.00 from Enron Corporation upon my termination as well as \$13,000,000.00 in payment for my Phantom Stock award. I understand that this constitutes an “extraordinary payment,” under 5 C.F.R. §2635.503, and therefore, for 2 years after this payment is received, I will not participate in any particular matter in which Enron Corporation is or represents a party, unless I receive a written waiver pursuant to section 2635.503(c).

Stock Options. Within 90 days of appointment, I will divest myself of my Enron Corporation stock options.

Cash Balance Retirement Account. Within 90 days of appointment, I will divest myself of my Enron Corporation Cash Balance Retirement Account. This account holds only Enron Corporation stock.

Enron Saving Plan (Retirement Plan). Within 90 days of appointment, I will divest myself of my Enron Saving Plan. This plan holds only Enron Corporation stock.

Enron Stock Ownership Plan. Within 90 days of appointment, I will divest myself of my Enron stock held through the Enron Stock Ownership Plan.

Stock. Within 90 days of appointment, I will divest myself of all other Enron Corporation stock.

Until these divestitures are made, and pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on Enron Corporation.

Other Positions Held Outside The U.S. Government

Catalytical Energy Systems, Incorporated

After confirmation, but not later than 30 days after appointment, I will resign my position as Director, Catalytical Energy Systems, Incorporated.

Greater Houston Area American Red Cross

After confirmation, but not later than 30 days after appointment, I will resign my position as Vice-Chairman, Greater Houston Area American Red Cross.

Furthermore, pursuant to 5 C.F.R. 2635.502, for one year after I terminate my positions with Catalytical Energy Systems, Incorporated, and Greater Houston Area American Red Cross, I will not participate in any particular matter involving specific parties in which any of these entities is or represents a party, unless I am authorized to participate.

I intend to retain my partnership interest in the T.E. White Family Limited Partnership. Currently, the limited partnership holds Defense contractor stock. I will transfer all holdings that I am required to divest out of the T.E. White Family Limited Partnership into my personal account. Within 90 days of appointment, I will divest these holdings. Where applicable, prior to divesting, I will request a certificate of divestiture from the Office of Government Ethics. Finally, I will ensure that the T.E. White Family Limited Partnership will not invest in any company that does business with the Department of Defense. I will consult with you before the partnership makes any new investments.

Defense Contractor Stock

Within 90 days of appointment, I will divest myself and the T.E. White Limited Partnership of holdings in defense contractor stock. These holdings are:

AOL Time Warner	Analog Devices, Inc.
Antec Corp.	Applied Materials
Cisco Systems, Inc.	Cognos Inc.
Computer Associates	Corning Inc.
EMC Corp.	Electronic Data Systems
Exodus	Globix Corp.
Network Appliance	Oracle Corp.
Peregrine Systems Inc.	Progress Software
Real Networks Inc.	Siebel Systems, Inc.
Solelectron Corp.	Sun Microsystems
TellLabs Inc.	Texas Instruments
Tycom	3Com Corp.
Veritas	

Where applicable, I will request a Certificate of Divestiture from the U.S. Office of Government Ethics. Until divestiture is complete, I will not participate personally and substantially in any particular matter that would have a direct and predictable effect on the financial interests of these companies, unless I first obtain a written waiver or qualify for a regulatory exemption.

I also understand that the following stock holdings present a potential conflict of interest under 18 USC 208(a), although it has been determined that it is not necessary at this time for me to divest these interests:

Extravision	Juniper Networks
TTM Tech	Amdoca Ltd
Flextronics International	BEA Systems Inc.
Celestica Inc.	Ciena Corp.
DoubleClick Inc.	EBay Inc.
Jabil Circuit Inc.	KLA Tencor Corp.
Lattice	Linear Technology
McData Corp.	Openwave Systems Inc.
Palm Inc.	QLogic Corp.
Sanmina Corp.	Vitria Technology
XO Communications	Xilinx Inc.

I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of these entities, unless I first obtain a written waiver or qualify for a regulatory exemption.

Investment Limited Partnerships

DLJ Private Equity Partners Fund II

Within 90 days of appointment, I will divest myself of the DLJ Private Equity Partners Fund II because I have no knowledge of the underlying holdings and I am unable to ascertain the holdings due to confidentiality agreements signed by the general partner of the Fund. Where applicable, I will request a Certificate of Divestiture from the U.S. Office of Government Ethics.

WSW 1996 Exchange Fund

Within 90 days of appointment, I will divest myself of the WSW 1996 Exchange Fund.

Where applicable, I will request a Certificate of Divestiture from the U.S. Office of Government Ethics. Until divestiture of the investment partnership is complete, where I have knowledge of underlying holdings, I will not participate personally and substantially in any particular matter that may have a direct and predictable effect on these holdings.

Other

I am aware of the requirements of the Federal criminal statute, 18 U.S.C. §208, concerning my financial interests and financial interests imputed to me, as well as the executive branch impartiality regulations contained in Subpart E of 5 C.F.R. part 2635. I understand that I am personally responsible for being aware of my financial interests. Further, should I have any question as to the application of any of the conflict of interest statutes or regulations to a specific asset or situation, I recognize the need to immediately seek advice from you.

Sincerely,

THOMAS E. WHITE

Senator NELSON. Now, on this chart that Senator Boxer and I displayed, the letter was May 4 and your appointment was on May 24, and you had 90 days in which to execute all of these trades. Within a month, basically you sell a little less than half of your stock and, of course, I think you have already stated you wished you sold it all.

Secretary WHITE. Well, you can see from that curve that is absolutely the case.

Senator NELSON. All right. Why did you wait to sell here, and then why did you ask for an extension?

Secretary WHITE. I asked for an extension because, Senator, I had certain investments in private equity funds that could not be liquidated within the 90-day period, and I needed the basic extension for that. I sent a letter to Senator Levin, the Chairman, and also Senator Warner, and they granted the extension to 25 November.

Senator NELSON. All right. Tell us about these telephone calls. Well, you just testified as to the telephone calls, and that testimony is relevant, what you just stated, to all of these telephone calls.

Secretary WHITE. Yes.

Senator NELSON. All right. Tell us about these meetings.

Secretary WHITE. The meetings were mainly old friends of mine that were coming through Washington and wanted to say hello. They had never seen the Secretary of the Army's office. They were concerned about how I was doing, I was concerned about how they were doing, and so we would have a short meeting. The meetings were maybe 10, 15 minutes in duration. I had one luncheon meeting with a fellow named Chris Holmes who had worked for me for a number of years at Enron and who was leaving Enron and wanted some advice, and I had another dinner with, in January of 2002 with Stan Horton, who was my partner in running all of the physical assets of Enron over the years, and we were very close friends. So that was the nature of the meetings.

Senator NELSON. In either the meetings or the telephone calls, did you talk to Enron employees about the stock price?

Secretary WHITE. About the stock price? Yes, because it affected their lives personally. It was what you were reading in the newspaper every day, looking at that chart, and the deterioration of the price, it would be an obvious point of discussion.

Senator NELSON. Now, these on this chart are all direct stock sales. What about the other things that you agreed to in the letter? When did they occur, for example, the stock options? "I will divest myself of Enron Corporation stock options." When did that occur?

Secretary WHITE. Actually I never could cash the stock options because by the end of the period, November 25, all the stock options were out of the money so they couldn't be exercised, and so I sent a letter to the company in January revoking my rights to the out-of-money stock options and sending them back to the company unexercised.

Senator NELSON. Was that the same on all these other things you had agreed to?

Secretary WHITE. No. Each one of them are different. The cash balance retirement plan I converted into an annuity in October. A part of the annuity—and that was an unwise choice, as it turns out, because a part of the annuity is paid for by a third party, part of the annuity is paid for by Enron, and Enron has defaulted on its obligation on its piece. That was done in October.

Senator NELSON. How about the savings plan?

Secretary WHITE. The savings plan was divested in the time period allowed.

Senator NELSON. And the stock ownership plan?

Secretary WHITE. The—all those shares were sold.

Senator NELSON. What did you say was the reason for the extension? The extension would have been June, July, August, so it would have been—here it would have been the 90 days. I bet you wish you had sold it within the 90 days, don't you?

Secretary WHITE. I certainly do, yes, but that was not the case, and that gets back—that's a good point. I—and this pattern of sales indicates that I believed in the company.

Senator NELSON. What was the reason for the extension?

Secretary WHITE. The reason for the extension was, I had private equity investments, and because they were illiquid, they could not be unwound within the 90-day period. One of them was an exchange fund and one of them was a private equity partners private fund, and it takes longer than the 90 days, typically, to unwind that type of investment.

Senator NELSON. And you had to unwind those in order to get the stock, to dispose of the remainder of the stock?

Secretary WHITE. Yes, because it is up to the general partner. What you own are units in the fund, and the general partner runs the fund. You're a limited partner, so you don't control that.

Senator NELSON. Now, when you are having all of these contacts—I have been through this before with regard to the sale of stock on a downward slope in the Florida Pension Fund, of which I was wondering who was calling pension fund managers to buy in order to prop up the price of the stock. You said that your conversations herein whether it is meetings or whether it is a telephone call you say is just incidental conversations.

Secretary WHITE. They are all old friends of mine, and as a matter of fact, if you look at what drove that stock price there were two significant events in that period. The first was the resignation of Jeff Skilling as the CEO of the corporation in August. The second was the third quarter earnings release, where it became quite clear to all of us that these off-balance partnerships and so forth were not as they had been portrayed before, and very shortly after the third quarter earnings release the company goes over the cliff.

Senator NELSON. OK. Now, clearly at this point you had an agenda of privatization of some of the Army systems.

Secretary WHITE. That's right. I still do.

Senator NELSON. Well, talk to us then about some of these defense contracts, for example, your involvement with a potential contract to run the utility systems at Fort Hamilton in Brooklyn.

Secretary WHITE. As I said, the history of utilities privatization at the Defense Department, it was authorized by the Congress in 1997, signed into law, as you know. The Department of Defense then put a program together to complete this by September 2003. We competed—Enron Energy Services formed a business unit to compete for that business, and EES was awarded the first contract award, which was Fort Hamilton, New York—Senator, you are from Brooklyn, I believe—not far from where you are from, and we began and took over the utilities, gas, water, electricity, and wastewater as a part of that program.

Senator NELSON. About what time did that negotiation occur on this chart showing May to June?

Secretary WHITE. It wasn't on that chart. The award at Fort Hamilton predated my becoming Secretary of the Army.

Senator NELSON. Why was the contract structured as a lease?

Secretary WHITE. Because that was the most—well, the government structured it as a lease. I was on the other side of the equation. It made more sense to the government to do it as a lease than as a sale of a capital asset.

Senator NELSON. So you are saying you had no involvement in the contract at Fort Hamilton?

Secretary WHITE. It was—the business team that sat on the other side of the table for the government and negotiated the contract was a part of EES. It was a retail endeavor, and we competed for that, and I put the business unit together to compete for the business.

Senator NELSON. Were you involved with any other military contracts that Enron may have been pursuing?

Secretary WHITE. No. With the government, you mean, with the military?

Senator NELSON. Yes.

Secretary WHITE. We bid on a lot of other installations, not only for the Army but the other services that were going through the solicitation process, but Enron up until the time I left was not successful in any of those bids, so I think it is fair to say Fort Hamilton was the only contract they won.

Senator NELSON. Were you involved in any privatization efforts during the year 2001 with the Enron Corporation when you were dealing as Secretary of the Army?

Secretary WHITE. No, none.

Senator NELSON. Thank you, Mr. Chairman.

Senator DORGAN. Senator Nelson, thank you.

Secretary White, the Attorney General's Office of California contends that EES was engaged in systematically overstating demand and essentially trying to create a false load, which is what allowed the wholesale side of the business to make a substantial amount of money. Are you aware of activities by which the division that you headed would overstate demand in the California marketplace for electricity?

Secretary WHITE. No, and it would have made no commercial sense for us to do that as a retail entity, as we talked about before.

Senator DORGAN. So you believe the Attorney General is wrong?

Secretary WHITE. Yes.

Senator DORGAN. The independent system operator believes the same thing. They are wrong?

Secretary WHITE. Well, we didn't have a direct relationship with the independent system operator. We went through EPMI for all scheduling and interface with the ISO, a service that we paid for from EPMI.

Senator DORGAN. The head of the California Public Utilities Commission believes that EES was inflating and overstating its loads.

Secretary WHITE. I was not aware of any, to my knowledge I was not aware of any overstating of load in the State of California beyond what we needed to serve retail customers. I just cannot imagine why it would have been in our commercial interest to do so.

Senator DORGAN. Is it possible that the organization you headed was overstating the load and creating a false load without your knowledge?

Secretary WHITE. It could be. Anything is possible. I am just telling you that I had no knowledge of it and, on its face value, from the way our business was run it doesn't make any sense.

Senator DORGAN. You are aware that in California, I believe, there were scheduling coordinators. There was an EPMI scheduling coordinator that helped schedule the load, is that correct?

Secretary WHITE. That's correct.

Senator DORGAN. And there was an EES scheduling coordinator in California.

Secretary WHITE. Yes, and I am sure that the job of the EES was to schedule the load through the EPMI coordinator.

Senator DORGAN. And, so, would they have sat in close proximity to each other, been in regular contact with each other?

Secretary WHITE. I am sure there is regular contact. I don't know whether they sat in close proximity.

Senator DORGAN. And so a corporation that discloses to us that it had schemes or strategies called, for example, Get Shorty, Fat Boy, and so on, in which in black and white it suggests that you have different parts of the company that can create and manufacture loads that are artificial and, therefore, the one side of the company can make a handsome profit, a very substantial profit, and the other side perhaps has a loss. Incidentally, your side in most cases had a loss. If you were in our position up here taking a look at an internal company document that says, here are our schemes and strategies, and the strategies rely on your organization's ability to be a part of that strategy, would you think that it is very improbable that you would not have known about that? Would you not be as suspicious as we are?

Secretary WHITE. I can see where you would have that suspicion, certainly, but I would also say that those memos outline a wide variety of strategies, wholesale trading strategies in the State of California, one of which—one of which seemed to feed on the load forecasts and the load scheduling services that we as a retail business were paying for from EPMI.

Senator DORGAN. But Secretary White, the California officials say that strategy worked. They allege that the organization that you ran was engaged in the strategy by inflating loads, and you say to us, well, that would not have made any sense. You are right about that, and it does not make sense to me that your organization was buying from your sister organization in Enron the highest-priced power that was out there on the market.

You say, well, our incentive would have been to buy the lowest priced power. I agree, that would have been your incentive. So then why is it that most of your purchases for power and most of the sales from EPMI related to these two Enron organizations? It makes no sense at all, except if you believe these two organizations under the Enron umbrella were trying to manipulate prices in California. That is the only conceivable explanation for it. Give me another explanation.

Secretary WHITE. That was not our intent, and we bought power from other people, and we sleeved it all through EPMI, so I don't know, because I don't have the data that is in front of you, but I don't know if it's because we sleeved it through EPMI that, in fact, it shows up as a purchase from them, or whether it is just the way the data was collected, but we bought from Aquila, we bought from Dynegy, we bought from other players in the market to get the best price.

Senator DORGAN. I am using FERC data, and it suggests that by far, the bulk of your purchases are from your sister organization, and we know also from evidence that they were charging the high-

est prices in the marketplace. In fact, these strategies were wildly successful, because one megawatt of power would be moved back and forth between organizations within Enron, in and out of California, and then all of a sudden the price would inflate dramatically. The wholesale division of Enron was making wild profits here and, the fact is, your organization was losing money.

Now, it just looks to me like these are pieces to a puzzle that fit, and it paints a terrible picture.

Secretary WHITE. Well, they don't fit to me, because it doesn't make any sense that we would engage in this and lose money on the retail side.

Senator DORGAN. But you did lose money on the retail side, and the wholesale side was making a fortune?

Secretary WHITE. No, we didn't lose money. If you take a look at the financials that were reported for the year 2000, Enron Energy Services was a profitable entity.

Now, we had lots of other businesses, and all of our income did not come from the State of California, but we were a profitable entity in 2000.

Senator DORGAN. Mr. Secretary, I am trying to understand here what went on, and you know, sometimes when you see one and one and an equals sign, and somebody writes two, you shake your head and say, yep, that sure adds up, that makes sense, that is what I learned. As I look at what happened here, it seems to me that you have the smoking gun of an internal corporate strategy document that says, here is the way our corporation is going to benefit on the backs of West Coast consumers, and billions of dollars were taken out of the pockets of West Coast consumers that should not have been taken out of their pockets.

I know there are criminal investigations and litigation, but I am just saying to you that the Attorney General of California, the ISO, and the Public Utilities Commission all say that your organization inflated your loads. Why did you inflate the loads? Because it fits with the strategies we have discovered in the smoking gun memos.

Secretary WHITE. Well, the smoking gun memos, first of all, were written by lawyers that worked for the Wholesale Group for the benefit of the Wholesale Group officers. There are about three sentences in these two memos that have to do with the fact that we were scheduling load, the EES was scheduling load through the wholesale enterprise. Other than that, these are entirely wholesale memos that have to do with wholesale trading strategies, as you pointed out, by attorneys that did not work for the retail group, did not report to us, and consequently I have never seen these memos until the FERC released them several months ago.

Senator DORGAN. Well, this glove looks to me like it fits. It is just a situation where everybody out there who is deeply involved in investigating this says, here is the way it happened. One part of the company facilitated the other part of the company making a fortune.

Now, let me just show you what the profits were. These are reported profits for EES during your tenure, and with one exception, the fourth quarter of 1999, it was losing money. Without the market-to-market, by the way, in the year 2000 you would not have been

profitable. Essentially it is a fairly unprofitable division at Enron, at least the way I look at it.

Secretary WHITE. Well, it was a start-up business. I joined it in April 1998. Enron had been struggling with its retail business since 1995. We had a goal in 1999 for the business to break even. That's the \$7 million in the fourth quarter of 1999. We were profitable throughout the year 2000, and mark-to-market—so we were a start-up business, so it's not at all surprising, with the investments that have to be made, that we were unprofitable in 1998 and 1999. We were profitable in the year 2000.

Senator DORGAN. I understand, but my point about 2000 is that this is not money you received. This is from mark-to-market contracts for which you would receive revenue many years in the future, so without mark-to-market you were unprofitable throughout this.

Secretary WHITE. And I would say also, Senator, that I didn't invent mark-to-market. That was the standard of the industry at the wholesale level, and so when we built a commodity business at retail level we did not have the choice of not using mark-to-market. It was the industry standard.

Senator DORGAN. Secretary White, let me ask you a question I asked Mr. Skilling and I would have asked Mr. Lay. A lot of people lost a fortune here, and you indicated yourself that—I do not know whether the word disgusted is the appropriate word, but you were fairly disgusted—

Secretary WHITE. Disgusted is a good word.

Senator DORGAN.—with what you discovered went on inside that corporation. If that is the case, then the gains that those at the top were able to leave the corporation with, it seems to me, are probably in many cases ill-gotten gains. Have you given any thought to returning some of those gains that you received during this period?

Secretary WHITE. No, I have not.

Senator DORGAN. Why not?

Secretary WHITE. Because I don't consider the gains for running the business in a responsible way to be ill-gotten.

Senator DORGAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. Mr. White, were you a hands-on executive who kept close tabs on what was going on with your employees?

Secretary WHITE. Yes.

Senator WYDEN. But it is so hard to reconcile that assertion that you were a hands-on executive with your statement that you really know nothing about all of these dummied-up operations.

Secretary WHITE. I'm telling you, Senator, that I would argue whether that is an accurate statement of what has happened. Now, we will wait for the FERC to opine, and Commissioner Wood was in here at your last hearing and talked about his ongoing investigation, and I think I, along with everybody else, eagerly awaits to see what his opinion is.

Senator WYDEN. Well, I will tell you, I have learned this morning that FERC is not even investigating your role in all of this, and I find that very troubling. I mean, I think if you look at what has become a matter of public record, and I started with this several hours ago, that at a minimum we are not prosecutors here. The Se-

curities and Exchange Commission and FERC should be looking at these matters, and you have told us now for the record you have not even been contacted by them.

Now, you have said you were not aware of Enron participating in a variety of these trading strategies that we have been concerned about here today. Those memos identify Enron Energy Services as a participant in the various trading schemes. For example, your company was identified as submitting a dummied-up load to the California independent system operation.

Secretary WHITE. No, I don't think that's true.

Senator WYDEN. Let me just finish the question, all right, and then you can tell me what you think is true or not, because these are memos that have triggered my concerns.

Tell us how it can be that Enron Energy Services is involved in submitting dummied-up load, and somehow the Vice Chairman, the Vice Chairman who is there at the time does not have any knowledge about it, especially given the fact you said you were a hands-on executive.

Secretary WHITE. Well, first let me tell you we didn't submit anything to the ISO. What we did was, we submitted scheduling every day. As Senator Dorgan pointed out, our scheduler would submit to EPMI's scheduler what our load requirements would be to serve our retail customers.

What EPMI did in terms of how it incorporated that load into their overall trading strategy and to suit their own purposes, there was something that was done in wholesale, and that is precisely what the memos say the relationship was that I'm reading. Let me read you two sentences.

Enron will submit a day-ahead schedule showing 1,000 megawatts of generation scheduled for delivery to Enron Energy Services. Enron in this case I think it is fair to say is EPMI, and then it goes on and says, in real time Enron sends 1,000 megawatts of generation, but Enron Energy Services only draws 500. This gets into the business of "inc-ing" and the strategy of "inc-ing".

We, I contend, would have submitted the 500 in the first place, and they on their side in scheduling with the ISO, if they chose to dummy that up, as you say, or increase it for whatever commercial purpose at wholesale level, would have done that without input from us and without participation by us. I think that is my fundamental point.

Senator WYDEN. Well, I think we would both agree—maybe it is one of the few things we would agree on this morning that, this is pretty dense stuff, but it is hard to see how all of this can go forward without a senior executive like yourself not having a sense of what was going on.

Now, let me ask you about this economic motive question that the Chairman and others have talked about. You were competing with the California power market, and it seems to me that if your competitor's prices are higher, that makes you more competitive, so everybody wins big at Enron. The wholesale division wins by higher wholesale prices. The retail division wins by having lower prices than the artificially inflated prices of your competitor. What do you disagree with?

Secretary WHITE. Well, first of all we are competing in a retail market, where the price of retail power is capped, and we are providing a discount off the commodity component of that capped retail price.

You will recall the structure of the California market had a capped retail price that had three principal components. One was a transition charge so that the utilities could recover their stranded investments. Second were the line charges and so forth, the normal regulatory charges, and third was the commodity piece of that. We were competing in the retail market at a discount to that commodity price in the retail market, not as a function of whatever the wholesale price was floating to be. We were in the retail business signing up customers.

Senator WYDEN. How would it not have been good for Enron Energy Services and for the other Enron entities to drive up the wholesale price for energy prices paid by California?

Secretary WHITE. I cannot pass it through to the retail customer.

Senator WYDEN. Just a moment. Would that not make the retail power sold by your company more competitive if the wholesale market price was inflated?

Secretary WHITE. Why? The retail price was capped. That was the whole problem that PG&E and SOCAL had, was that they could not pass the cost that they were paying in the wholesale market on to retail customers, so we're competing in a capped retail market, and we have to compete against that capped price and get a discount off of it, so wild fluctuations in the wholesale price don't make any sense to us as a retail player.

Senator WYDEN. Again, there are so many questions triggered by your answers, not the least of which is the Ricochet concept, which of course we heard about in other memos, and I want to wrap up just with this. What would you have done differently if you could take all of these events back? I mean, you seem to at least—unless I am missing something this morning, you seem to be defending everything that went on in terms of your own role, and I think it would be useful at least for my knowledge, what would you, looking back, have done differently, if anything?

Secretary WHITE. From an Enron perspective?

Senator WYDEN. No, your role. I would like to know what, if anything, you would have done. We have got all these memos saying your employees did various things. We have got your employees—Mr. Secretary White, your employees are saying that you personally participated in deceptive acts. Those are news articles that have been written all over the country. I want to give you the chance to say what, if anything, you would have done differently?

Secretary WHITE. I would have never left in the first place if I had had any idea that the fundamental economics of Enron, when you look at the special purpose entities and the off-balance sheet transactions that have been widely discussed, their impact on the restatement of earnings, and everything that has happened since the third quarter—if I had any idea that that kind of tragedy and hardship was coming, and that my business unit would be a part of it, I would have never left Enron in the first place. I would have stayed and fought it out to try and fix it.

Senator WYDEN. How would you have fought it out? What would you have done?

Secretary WHITE. Well, starters, if I had had any idea, as a member of the Management Committee, that the Chief Financial Officer of the corporation had been permitted by the Board of Directors to operate in a conflicted position, and therefore against the Enron shareholders, and that all of these special purpose entities that were being created off-balance sheet were not really off-balance sheet, and that those risks would migrate at some point to the balance sheet and ultimately destroy the corporation, I think if that was widely known with the Management Committee of Enron, we would have fixed it, but it wasn't.

Senator WYDEN. Tell me your assessment of these allegations by the various employees with respect to their comments that you were involved in deceptions, or is this just totally false?

Secretary WHITE. I don't agree with it, because I could bring thousands of employees into this room that worked at Enron Energy Services that wouldn't agree with it.

Senator WYDEN. Well, Mr. Chairman, I want to wrap up by saying this is exactly the reason why several hours ago I said that it is so important that the Securities and Exchange Commission and the Federal Energy Regulatory Commission look not just at Enron's activities overall, but look at Secretary White's role, because he has just said he disagrees with his former employees who have linked him to these deceptive acts. That is, of course, your right. I do not challenge that at all.

But when you have a difference of opinion, and a difference of opinion that is so stark on material matters that have been devastating to the constituents that I and others on the West Coast represent, that is why you have the government do its job, and to me the fact that those two agencies, the SEC and the Federal Energy Regulatory Commission, are sitting on the sidelines with respect to examining Secretary White's role raises profound questions about whether or not we are going to have in this administration, an administration that is serious about going after allegations of misdeeds that can affect thousands and millions of consumers across the country.

Mr. Chairman, thank you.

Senator DORGAN. Senator Boxer.

Senator BOXER. Thank you, Mr. Chairman. You know, I want to put together, Mr. Chairman, your chart and my chart of the spiked prices to prove a point, which is that California was used as a cash cow, notwithstanding anything that was said here today, so I want to show you exactly the date. The last quarter of that profitable year is exactly when the prices spiked, the last quarter of that profitable year.

We were not born yesterday. California was used as a cash cow, and I have some questions to get to that point, but I want to close off the telephone conversations, because I want to make sure that I restate something. There were 77 phone calls, we believe, and meetings involved about 18 people, and the most calls were to Mr. Hurt, who you define as a very close friend.

Secretary WHITE. He is, and so is his wife.

Senator BOXER. Good. Three people on the list said they were really good friends of yours, Stan Horton, Marty Sundee, and Dan Leff. The rest of the people, including Mr. Hurt, refused to confirm or deny that they were really close friends, and their lawyers would not reveal whether they were close friends or not.

Secretary WHITE. Are you contending Mr. Hurt is not a good friend of mine?

Senator BOXER. No. I am trying to wonder why a best friend—

Secretary WHITE. Would you like him to call you this afternoon?

Senator BOXER. Sir, common sense would say to me—and I want everyone to think about this. Think of who your best friend is, and you are in some kind of a hot seat here, and a U.S. Senator who is kind of trying to find the truth is calling to find out could you confirm that so-and-so is a best friend, your best friend, I would hope my best friend would say, you bet, but I cannot get that answer. What I am trying to say is what Senator Wyden and I have said several times, we are not prosecutors.

I want the SEC to look at it. They look at Martha Stewart for four calls. They have not looked at you for 77 calls, and I am very frustrated at that point, and I wanted to put in the record the three that did say that, because I did not want to not tell the truth. I had forgotten those three had said it.

Now, California. Secretary White, I want to ask you a couple of questions here. You have testified you knew nothing about the accounting improprieties and energy market manipulations while you were at EES. That is correct, is it not?

Secretary WHITE. What accounting improprieties?

Senator BOXER. The ones that have been in the paper.

Secretary WHITE. Are you talking about mark-to-market accounting?

Senator BOXER. Let us talk about hiding profits, and let us talk about hiding losses in the big picture. Did you know anything about that?

Secretary WHITE. No.

Senator BOXER. Did you know anything about “inc-ing”?

Secretary WHITE. No.

Senator BOXER. While you were in charge of day-to-day operations, you never heard of the term, “inc-ing”?

Secretary WHITE. Never.

Senator BOXER. And you never heard of the term, Fat Boy?

Secretary WHITE. Never.

Senator BOXER. And you never heard of the term, Ricochet?

Secretary WHITE. Never.

Senator BOXER. So you were stunned when two lawyers, one of whom was on loan to Enron—figure this out—and prepared a memo. You were stunned to see it after the fact?

Secretary WHITE. I was surprised, yes.

Senator BOXER. You were not stunned?

Secretary WHITE. Stunned that people would, if you have capped price in the State of California and you have uncapped prices in surrounding states, and someone, a trader would try to arbitrage the difference in the prices of those two markets, I do not think anybody that knows how traders operate would find that stunning. I am surprised by it, yes.

Senator BOXER. Well, it was illegal to do this in California, to do the Ricochet, and we have the same two lawyers writing a later memo citing the illegalities and the fact that Enron and EES—which is mentioned on page 2, by the way. EES is mentioned on page 2 of the initial memo—that, in fact, these were illegal under the rules of California.

Secretary WHITE. The memo does not say, does not say that Enron Energy Services did anything except submit load, submit retail load to EPMI to be scheduled.

Senator BOXER. So you do not think that EES had anything to do with any of these schemes in any way?

Secretary WHITE. They were wholesale schemes. I have no knowledge of our participation, our—let me correct that, Enron Energy Services' participation in any of the schemes outlined in either memo.

Senator BOXER. And you were not stunned to read them, even though I have just told you that they were against the law in California?

Secretary WHITE. And if they are against the law, then I am all for those that participated in it being prosecuted to the full measure of the law.

Senator BOXER. And I would ask unanimous consent to place into the record the page in which EES is specifically mentioned, as it has to do with “inc-ing” part of the deal.

[The information referred to follows:]

1. *“Inc-ing” Load Into The Real Time Market*

One of the most fundamental strategies used by the traders is referred to as “inc-ing” load into the real time market.” According to one trader, this is the ‘oldest trick in the book’ and, according to several of the traders, it is now being used by other market participants.

To understand this strategy, it is important to understand a little about the ISO’s real-time market.¹ One responsibility of the ISO is to balance generation (supply) and loads (demand) on the California transmission system. During its real-time energy balancing function the ISO pays/charges market participants for increasing/decreasing their generation. The ISO pays/charges market participants under two schemes: “instructed deviations” and “uninstructed deviations.” Instructed deviations occur when the ISO selects supplemental energy bids from generators offering to supply energy to the market in real time in response to ISO instructions. Market participants that increase their generation in response to instructions (“instructed deviation”) from the ISO are paid the “inc” price. Market participants that increase their generation without an instruction from the ISO (an “uninstructed deviation”) are paid the ex post “dec” price. In real-time, the ISO issues instructions and publishes ex post prices at ten-minute intervals.

“Inc-ing load” into the real-time market” is a strategy that enables Enron to send excess generation to the imbalance energy market as an uninstructed deviation. To participate in the imbalance energy market it is necessary to have at least 1 MW of load. The reason for this is that a generator cannot schedule energy onto the grid without having a corresponding load. The ISO requires scheduling coordinators to submit balanced schedules; i.e., generation must equal load. So, if load must equal generation, how can Enron end up with excess generation in the real-time market?

The answer is to artificially increase (“inc”) the load on the schedule submitted to the ISO. Then, in real-time, Enron sends the generation it scheduled, but does not take as much load as scheduled. The ISO’s meters record that Enron did not draw as much load, leaving it with an excess amount of generation. The ISO gives Enron credit for the excess generation and pays Enron the dec price multiplied by the number of excess megawatts. An example will demonstrate this. Enron will sub-

¹The “real-time” energy market is also known as the imbalance energy market. The imbalance energy market can be further subdivided into the (1) supplemental energy or instructed deviation market and (2) the ex post market or uninstructed deviation market.

mit a day-ahead schedule showing 1000 MW of generation scheduled for delivery to Enron Energy Services (“EES”). The ISO receives the schedule, which says “1000 MW of generation” and “1000 MW of load.” The ISO sees that the schedule balances and, assuming there is no congestion, schedules transmission for this transaction. In real-time, Enron sends 1000 MW of generation, but Enron Energy Services only draws 500 MW. The ISO’s meters show that Enron made a net contribution to the grid of 500 MW, and so the ISO pays Enron 500 times the dec price.

The traders are able to anticipate when the dec price will be favorable by comparing the ISO’s forecasts with their own. When the traders believe that the ISO’S forecast underestimates the expected load, they will inc load into the real time market because they know that the market will be short, causing a favorable movement in real-time ex post prices. Of course, the much-criticized strategy of California’s investor-owned utilities (“IOUs”) of underscheduling load in the day-ahead market has contributed to the real-time market being short. The traders have learned to build such underscheduling into their models, as well.

Two other points bear mentioning. Although Enron may have been the first to use this strategy, others have picked up on it, too. I am told this can be shown by looking at the ISO’s real-time metering, which shows that an excess amount of generation, over and above Enron’s contribution, is making it to the imbalance market as an uninstruced deviation. Second, Enron has performed this service for certain other customers for which it acts as scheduling coordinator. The customers using this service are companies such as Powerex and Puget Sound Energy (“PSE”), that have generation to sell, but no native California load. Because Enron has native California load through EES, it is able to submit a schedule incorporating the generation of a generator like Powerex or PSE and balance the schedule with “dummied-up” load from EES.

Interestingly, this strategy appears to benefit the reliability of the ISO’s grid. It is well known the California IOUs have systematically underscheduled their load in the PXs Day-Ahead market. By underscheduling their load into the Day-Ahead market, the IOUs have caused the ISO to have to call on energy in real time in order to keep the transmission system in balance. In other words, the transmission grid is short energy. By deliberately overscheduling load, Enron has been offsetting the ISO’s real time energy deficit by supplying extra energy that the ISO needs. Also, it should be noted that in the ex post market Enron is a “price taker,” meaning that they are not submitting bids or offers, but are just being paid the value of the energy that the ISO needs. If the ISO did not need the energy, the dec price would quickly drop to \$0. So, the fact that Enron was getting paid for this energy shows that the ISO needed the energy to balance the transmission system and offset the IOU’s underscheduling (if those parties own Firm Transmission Rights (“FTR”) over the path).

Senator BOXER. I would also ask you a couple of other questions. John Olson, an analyst, and Alexander Morrison Harris, do you recall being asked by him in 1999 how Enron’s Energy Services, EES, a relatively small operation at the time, could already show millions in profit, but with very little actual business? Do you remember, you gave him a one word answer, California?

Secretary WHITE. No.

Senator BOXER. Do you remember him?

Secretary WHITE. Oh, sure.

Senator BOXER. Do you ever talk to him?

Secretary WHITE. I have talked to him on several occasions. He was a Houston-based analyst. He was at Merrill Lynch for a portion of his career, always covering Enron, then he moved to the organization you just said.

Senator BOXER. So the fact that he recalls you saying there is one word that answers the question of how we made money, and I showed you the charts, you said California, you do not recall that? Could you have said California?

Secretary WHITE. I’m sorry, what year was that?

Senator BOXER. He talked to you in 1999.

Secretary WHITE. No, I'm sorry, I don't remember the specifics of a conversation three years ago with John Olson.

Senator BOXER. Did you in any way participate or have knowledge of a fake trading room that EES and Enron threw together, staffed by secretaries and other support personnel, to appear to be an actual and active trading facility that was thrown together apparently in hindsight, as we view it, to simply impress visiting stock analysts?

Secretary WHITE. What was the question, was I aware of it?

Senator BOXER. Did you participate in any way, or have knowledge of a fake trading room that EES and Enron threw together, staffed by secretaries and other support personnel, to appear to be an actual and active trading facility, which appears to have been thrown together simply to impress stock analysts?

Secretary WHITE. Let me tell you exactly what my relationship was with that. First of all, I joined Enron in April 1998. The incident that you are talking about was a part of the analyst conference of January 1998. I had no direct hand in the scheduling, or whatever else happened in the walk-through of the analysts that chose to go over to the Enron building after the meeting of the EES operation. I don't recall what it purported to be, whether it was a trading floor or a deal floor. I didn't set it up. I wasn't at EES at the time.

Senator BOXER. Did you ever go to it?

Secretary WHITE. I think I walked through along with the analysts.

Senator BOXER. And what did you think when you saw it? What did you think it was?

Secretary WHITE. It looked brand new.

Senator BOXER. And.

Secretary WHITE. I don't think, if there was an issue of credibility, that it would fool or deceive a single Enron analyst, because the question the analysts were asking at that time was a typical analyst's question, and that was, you've been losing money for three years in retail, when is this thing going to be profitable, and show us the numbers, and that is what they were after.

Senator BOXER. OK, but I am just—just to the point of what Senator Wyden asked you, if you could do it over, you were in this room, you thought it was new—

Secretary WHITE. It was new.

Senator BOXER. Did you think it was real, that real things were happening on the floor?

Secretary WHITE. I had no way of knowing, because I wasn't in the business unit at the time, whether it was real or not.

Senator BOXER. And you say the analysts chose to go there. Don't you think they were invited to go there?

Secretary WHITE. Oh, sure they were.

Senator BOXER. You said they chose to go there, as though they said, gee, I have nothing to do, let us go to the floor.

Secretary WHITE. The way the analyst meetings were conducted with Enron at that time in history was, you would have a big conference in the morning, and you would have a wide range of buy and sell side analysts that covered Enron. Then there would be an optional visit to the Enron building to look at wholesale trading

and anything else that the corporation chose to show, and some of the analysts came, and some of the analysts didn't come. Some went and got on their planes and left, so I don't recall how many of them attended that, or how significant it was.

Senator BOXER. Let me just read this. Lance Dohman quoted in Dow Jones Energy Services—

Secretary WHITE. Who is Lance Dohman?

Senator BOXER. He writes for Dow Jones Energy Services. He is a former trader. All the senior management was there, meaning the floor. Jeff Skilling, Ken Lay, Lou Pai, Tom White. Then the countdown started 30 minutes before the analysts arrived, 15 minutes, then the analysts began walking through, and Jeff Skilling says, gentlemen, behold, this is where we track the deals in real time, and then he goes on to say, the problem was, the computer was not plugged into anything, so are you saying you were duped?

Secretary WHITE. I walked through with everybody else.

Senator BOXER. So even though this gentleman thought you were part of the management team—

Secretary WHITE. I wasn't.

Senator BOXER. You were not?

Secretary WHITE. I was not a member of the EES team that set that up, that ran it.

Senator BOXER. But it looks as if this particular trader—

Secretary WHITE. Who is Lance Dohman?

Senator BOXER. He is a trader.

Secretary WHITE. For who?

Senator BOXER. With EES.

Secretary WHITE. I've never heard of him.

Senator BOXER. Well, this again gets to Senator Wyden's point. We are not prosecutors here, but he recalls you being there, and he called you senior management, and now this has a ring of truth to it, but let us put it down, because you do not think it is.

Secretary WHITE. Well, specifically, I was there. I walked through with the analysts. I was not a participant in the demonstration, or whatever you wanted to call, EES put on, because I wasn't in EES at the time. I was running a different business unit. So I walked through, along with everybody else.

Senator BOXER. You walked through, and you associated with the analysts, not with the corporate leaders there?

Secretary WHITE. In other words, there were—we all walked through together, because I was not—and they walked through other places.

Senator BOXER. And they duped you?

Secretary WHITE. What?

Senator BOXER. They duped you, the other corporate leaders?

Secretary WHITE. I didn't have any evidence to track how much of it was real or unreal, is the point. I just observed it, like everybody else.

Senator BOXER. As the Vice Chairman for EES until May 2001, did you have any discussions at any time with officials at Reliant, Dynegey, Williams, CMS, while the California electricity markets were failing during the two-year energy crisis in California?

Secretary WHITE. No.

Senator BOXER. So you never spoke to any other executives from other companies?

Secretary WHITE. About the California crisis? No.

Senator BOXER. No, not just about the California crisis.

Secretary WHITE. Do you mean socially?

Senator BOXER. Absolutely not socially, about business in any way?

Secretary WHITE. No.

Senator BOXER. No contacts?

Secretary WHITE. No.

Senator BOXER. OK. Well, let me say this. When you asked for your extension from the original 90 days, in answering Bill Nelson's point—because you spoke about how bad it is to have a conflict of interest, and you criticized others for having a conflict. You know, the reason the Armed Services Committee wanted you to divest is because of conflict of interest, real or perceived, and when you were questioned by Bill Nelson you basically said, I want an extension because I believed in the company.

Now, translate that to me, an old stockbroker. I hear the stock is going to go up, and I think to my mind that you should have divested within the 90 days without asking for extensions, even if you thought the price was going up. That is just—it is not illegal that you asked for the extension, but your admission here today that that was—you believed in the company, you wanted an extension. That does not give me a lot of comfort about the way you view your job as one of the highest officials in the military.

Secretary WHITE. I think what I said to Senator Nelson, to be more accurate, I asked for an extension because of my private equity partnerships. I also believed in the company, no question about it, and my selling pattern, the fact that I never cashed in the options reflects that.

Senator BOXER. Well, you said two things, and I believe you on both counts, and I am just suggesting it is my opinion that in the kind of job that you had, instead of being busy getting extensions—this is just an opinion, because you thought the stock would go—unload, and you know, the truth is, you would have been better off financially.

Secretary WHITE. No question.

Senator BOXER. And you should have done it because it was the right thing to do. It would have been the right thing to do.

Well, let me just conclude here on this point. It does not ring true to me that the man in charge of daily operations for EES knew so little, and I would like to ask you one last question from Senator Nelson. Do you recall refusing, when you were at EES, to consider any federal contracts that called for audits of Enron and EES in the contract, like the Fort Hamilton one?

Secretary WHITE. No, I don't recall. We had to bid to the specification of the Government, and I am sure that in our commercial discussions with them we tried to use the burden of auditing and so forth, and so we might have made those arguments, but we went ahead and signed the contract.

Senator BOXER. With the audit requirement in it?

Secretary WHITE. Whatever the Government required.

Senator BOXER. Well, I know Senator Nelson is going to look at this particularly at Fort Hamilton, but in any event, I want to thank you, Mr. Chairman, because from the standpoint of California I think we go back to connecting dots here from the day you started this inquiry till now. All we have to do is look at the facts, look at what people said, and what we see is that in fact California was used as a cash cow.

There were schemes. People run away from it. They run away. They walk into phony trading rooms, but they are honorable people and they are high up and gee, they did not know anything untoward was going on and they did not stay with their counterparts, the executives. They were just duped like the analysts. They did not even know.

And all of this, and many, many phone calls, and getting extensions, and all of these things, I would say to you, Secretary White, just make me feel uncomfortable and upset, and from the standpoint of the people of California, I think you did say—and we will close on this, what Mr. Olson said. I did not believe Mr. White or any of the other Enron executives I spoke with were being honest or forthcoming about EES' profits. When I pressed Mr. White for an answer he said one word, California.

And you know what, who could make that up? That is something you would remember.

Secretary WHITE. I don't remember it.

Senator BOXER. If somebody asked you about your profits, you would say, well, we have got a good strategy. We have looked at a long-term plan. Look at our annual report, look at our vision. One word, California. Jeffrey Skilling said the same thing in a little other word. Jeffrey Skilling said, when California's problems were solved, we went under.

I believe, Secretary White, that there was a scheme to bilk our people to make EES profits. I will believe it forever. I do not agree with you. I do not think you are credible on the point. I do not think that what you did while we were under siege was right. It is my opinion. We just differ.

Secretary WHITE. We do.

Senator BOXER. Thank you very much.

Senator DORGAN. Senator Boxer, thank you. These issues are going to be resolved sooner or later. We have multiple investigations occurring, and they will be resolved.

Let me mention that in the earlier part of the hearing this morning we had invited the Chamber of Commerce to present testimony on corporate governance. We invited Felix Rohatyn. By consent, I will put a submission by Felix Rohatyn in the record on corporate governance.

[The information referred to follows:]

PREPARED STATEMENT OF FELIX G. ROHATYN, ROHATYN ASSOCIATES LLC

ROHATYN ASSOCIATES LLC
New York, NY, July 15, 2002

Hon. BYRON DORGAN,
U.S. Senate,
Washington, DC.

Dear Chairman Dorgan:

Thank you for inviting me to testify before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Consumer Affairs, at the hearing on improving corporate responsibility.

I regret that I am unable to attend the hearing but I would like to submit for the record an editorial that presents my ideas for corporate reform; it appeared in *The Wall Street Journal* on June 24, 2002.

I appreciate your leadership on this important issue and look forward to working with you in the future.

Sincerely,

FELIX G. ROHATYN

Enclosure

AN AGENDA FOR CORPORATE REFORM
The Wall Street Journal, June 24, 2002
 By Felix G. Rohatyn

As scandals from Merrill Lynch to Andersen and Enron make clear, in the past few years the most fundamental principles of our market system were being flouted: full disclosure, strong corporate governance, strong ethical standards. Congress, the Securities and Exchange Commission and various other organizations are now taking corrective measures to clean up the market mess. The steps being taken now are positive, but we should consider additional changes in a few other areas.

Start with the role of corporate directors. Most of them are supposed to be independent of the company. The reality of the nominating process, however, dictates that directors are chosen by the management and the existing board, and ratified by the shareholders in a vote that is, most frequently, pro forma. It is quite normal that outside directors, even if financially independent of the corporation, are loath to challenge the management on issues such as compensation in order not to disturb the cohesion of the board. Having served on a number of boards, I have fully participated in that process.

But it would be healthy to provide for a cadre of truly independent directors, professionally qualified and really nominated by shareholders. This could be accomplished if large institutional stockholders, in particular the public pension funds, owners of a majority of U.S. equities, put up their own candidates for a number of boards. One such director per board would suffice.

The nominees could be selected from a list of qualified former executives and academics, who would limit their directorships to no more than two or three companies, and would see this as a full-time, well-paid activity. They could be provided with staff support by the institution, as well as additional compensation by a fund set up by the institutions collectively. Total compensation for such a cadre could range between \$250,000 and \$350,000 per year.

Up to now, the larger pension funds have been reluctant to get this deeply involved in corporate governance; if they are unhappy with performance, they simply sell. However, the California Public Employees' Retirement System (Calpers) recently announced that it would vote against reappointing auditors at companies including Exxon Mobil, Home Depot and McDonald's because they pay accountants for non-audit services. Calpers will also vote against directors who are member of audit committees that approved using auditors for consulting services. The logical continuation of this trend would be for the pension funds to nominate their own directors. It's in their interest to do so; after all, the collapse of Enron cost public pension funds about \$3 billion.

One of the first priorities for independent directors should be to prohibit auditors from doing consulting work. Even if it's impossible to get this proposal written into legislation because of the political power of the accounting industry, boards of directors can make this sensible move on their own. Pension funds like Calpers should press them to do so.

The second major area of reform concerns banks. Since the repeal of the Glass-Steagall Act in 1999, banks have entered the investment banking business. They are making use of their vast financial muscle to perform numerous functions for their corporate clients, which often create serious conflicts of interest. It is not healthy to be a company's financial advisor for a sale or merger, while simultaneously representing buyers of assets to be sold; to be lender to a company while underwriting a sale of its securities to pay down the debt; or to be an agent in its foreign exchange or derivatives trades while being a principal as its counterparty.

Yet such conflicts-of-interest are rampant because we have gone too far in a de-regulatory direction. While re-enacting Glass-Steagall is a non-starter, greater vigi-

lance on the part of the regulators, as well as the boards of directors, should be devoted to these conflict issues.

The securities industry and its regulators must police the behavior of investment houses and their analysts. When a reputable firm allows its analysts to make recommendations that they know to be false, that is more serious than a simple conflict-of-interest. Research and advisory services are there to protect the investors, not to generate investment-banking fees. Any deviation from that commitment must result in harsh punishment, both to the firm and to the analyst. The notion that independent research firms cannot survive economically is not necessarily true. There are examples now such as Value Line, and the large institutional investors could certainly accelerate the process.

The third and final area of reform concerns stock options. I recall serving on corporate boards in the 1980s when the pressure coming from institutional investors to align management interests with shareholder interests led to large-scale compensation restructurings away from cash and in favor of options. The use of options was, in many cases, abused; accounting for options did not truly reflect the cost to the company; and the options failed to align management with the shareholders because they eliminated any risk to the holders of the options.

It's time to consider simple stock grants in lieu of options. The recipients would be at risk from the day of the grant; thus their interests would be aligned with the shareholders. The stock could not be sold until some time after the executive had left the company; a change would be required from the Internal Revenue Service to defer the tax on the grant until the sale of the shares. If this change were not obtainable, provision could be made for the companies to assist their executives in borrowing the amount of the tax until the sale of the shares. The accounting for such a change would be straightforward: The value of the stock grants would be charged to the company's income in the year of the grant, reflecting the reality of the situation.

Such a policy change should probably be accompanied by a greater proportion of compensation in cash (salary and bonus) tied to performance. The principle of ownership, instead of options, is the only way to truly align the interests of management with those of shareholders.

Of course, ultimately rules are no substitute for ethics. I believe that our corporate world and our financial markets will ultimately reward ethical behavior—and (as we are now seeing) punish those who are guilty of questionable practices. Ethics will turn out to be more than a moral imperative; it will turn out to be good business. It will sell at a premium.

Mr. Rohatyn is a former managing director of Lazard Freres and a former U.S. ambassador to France.

Senator DORGAN. Secretary White, let me conclude by making this comment. We have had Mr. Lay come to this Committee. He asserted his Fifth Amendment rights not to testify. Mr. Skilling came and testified at great length. He told us that he really was unaware of any of the issues that had been raised, and I am talking there now about issues that have been raised by the investigation done by the Board of Directors in which they said that the Enron Corporation booked \$1 billion of profits that it did not earn.

That is what they told America. Here is \$1 billion in one year that it really did not earn, and it had debt that it kept off the books, so the Board of Directors themselves said that what went on inside the corporation was, "appalling".

You can well understand, then, with Mr. Skilling coming before the Committee and speaking for a great length of time and saying, you know, I really had nothing to do with any of this, I was not aware of it, it all happened somewhere else, on somebody else's watch, that those of us who, on behalf of employees and stockholders who lost a great deal of money, are trying to determine accountability. One North Dakotan who worked for Enron, one of the pipeline companies, he said, look, it is my fault. I put all of my 401(k) in Enron stock. It is my fault.

But he said, I was told by things that were sent out by the company, you should do this, believe in this company, bet on this company, invest in this company, we are going to grow, we are going to be bigger and better, so he said, I did. I put it all in Enron stock, and it was \$330,000, and now it is \$1,700. He said, Mr. Senator, that is my life savings, and it is gone.

So the point I make to you is there has to be accountability somewhere. It was not with Mr. Lay, it was not with Mr. Skilling. You indicate to us that you had no knowledge of what was going on with respect to the marketing practices dealing with West Coast energy. I, frankly, do not know what the truth is, because you know, there is so much contradictory evidence.

I do know this: a lot of people made a lot of money, and a lot of people lost their life savings, and that is a true tragedy. I do not think it happened because normal market forces just caused this to happen. I think there were people who were involved in this that were breaking the law, that were breaking nearly every covenant of honesty and respect that one should have for those who run corporations, and we need to find out exactly who they are. I hope they will do more than just a couple of years of hard tennis at some minimum security institution. My expectation is there ought to be real punishment for people who do this.

Now, you have testified at some length today. I wanted the record to reflect, because of Senator Smith's point, that you came when we invited. There was never a question that you were not going to come, and there was never a question you were going to assert your Fifth Amendment rights. We appreciate your testimony today.

I must say that it does not shine much additional light for me, because I think there are still so many unanswered questions that apparently will have to be answered in the context of the many investigations that continue. My hope is that the federal regulators, in addition to the California Attorney General and the ISO's and others, will get active here. I worry very much that there are federal regulators who came to government not wanting very much to regulate; that is a terrible disservice to the American people, especially at a time like this.

But there will be more on this issue, and on the issues surrounding some of the other scandals that exist. I expect that our Committee and others will have additional hearings, but for now, Mr. Secretary, we appreciate your appearance. Thank you for being here.

This hearing is adjourned.

[Whereupon, at 1:25 p.m., the Committee adjourned.]